AIDS TO THE INVESTIGATION OF PROFESSIONAL CRIME.

BENGAL SECRETARIAT LIBRARY

BY

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INDIAN (IMPERIAL) POLICE SERVICE.

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PREFACE.

The idea of compiling a handbook for the use of Investigating Officers was given me about three years ago by Mr. T.C. Simpson, I. P., Deputy Inspector-General of Police, to whom I am indebted also for many valuable suggestions which have given the book the form in which it is now published. In offering this volume to Police Officers I do not claim any novelty or originality, but I feel that I am supplying a handy work of practical reference the want of which is often felt by Investigating Officers, specially when they carry on their work away from Police Stations where they can not always have the advantage of such books of reference as the annotated editions of the Codes or works on Criminology or Criminal Tribes. I have dealt with professional crime as it is what mainly concerns the Police, but the portion containing the general principles of investigation will be found useful in the handling of all sorts of cognizable offences. Important rules from the Police Regulations have been given in this portion as well as in other parts of the book where necessary. The notes on Criminal Tribes, though brief, contain all useful informations including the particulars of the Government Notifications which brought the tribes under the operation of the C. T. Act. The Law portion contains almost all the sections dealing with cognizable offences against property, whether professional or not, and as it is sufficiently exhaustive it may be safely relied on by Prosecuting Officers as well. A copious index has been appended to the book to facilitate reference.

I am deeply grateful to Mr. R. B. Hyde, I. P., Inspector-General of Police, Bengal, Mr. T. C. Simpson, I. P., Deputy Inspector-General of Police and Mr. A. D. Gordon, I. P., Assistant Inspector-General of Police, for their kind support and encouragement which helped me to a great extent in publishing the book.

COOCH BEHAR,
The 20th May, 1920.

B. N. BANERJEE.

Explanation of Abbreviations.

All.	...	Indian Law Reports, Allahabad Series.
A. L. J.	...	Allahabad Law Journal.
A. L. J. R.	...	Allahabad Law Journal Reports.
A. W. N.	...	Allahabad Weekly Notes.
Ad. &. E.	...	Adolphus and Ellis.
Bell.	...	Bell's Crown Cases Reserved.
Bell. C. C.	...	do.
Bom. ...	...	Indian Law Reports, Bombay Series.
Bom. L R.	...	Bombay Law Reporter.
B. H. C.	...	Bombay High Court Reports.
Bom. H. C. R.	...	do.
Burr. R.	...	Burrow's Reports.
B. L. R.	...	Bengal Law Reports.
B. H. C. (Cr. C.)	...	Bombay High Court, Criminal Cases.
B. U. C.	...	Bombay Unreported Cases.
B. Unrep. Cr. C.	...	do.
B. & C.	...	Barnwell and Creswell.
Burma L. R.	...	Burma Law Reports.

Bur. L. T.	...	Burma Law Times.
Cal. ...	...	Indian Law Reports, Calcutta Series.
C. & K.	...	Carrington and Kinwan.
C. C. R.	...	Crown Cases Reserved
C. L. R.	...	Calcutta Law Reports.
C. & P.	...	Carrington and Payne.
C L. J.	...	Calcutta Law Journal.
Cox.	...	Cox's Criminal Cases.
Cox C. C.	...	do.
C. P. L. R.	...	Central Provinces Law Reports.
Cr. C.	...	Croke's Reports of the Reign of Charles I.
Cr. R.	...	Criminal Rulings of the Bombay High Court.
Car. & M.	...	Carrington and Marshman.
C. W. N.	...	Calcutta Weekly Notes.
Dears.	...	Dearsley's Crown Cases.
Den.	..	Denison's Crown Cases.
East.	...	East's Reports.
East. P. C.	...	East's Pleas of the Crown.
Fost.	...	Foster's Crown Law.
Leach.	...	Leach's Crown Cases.

Lewin.	...	Lewin's Crown Cases.
L. J. M. C.	...	Law Journal, Magistrate's Cases.
L. & C.	...	Leigh and Cave's Crown Cases.
L. B. R.	...	Lower Burma Rulings.
L R. C. C.	...	Law Reports, Crown Cases.
Mad.	...	Indian Law Reports, Madras Series.
M. H. C.	...	Madras High Court Reports.
M. H. C. R.	...	do.
M. L. J. R.	...	Madras Law Journal Reports.
M. L. T.	...	Madras Law Times.
Mood. Cr. C.	...	Moody's Crown Cases Reserved.
M. & W.	...	Meeson and Welby.
M. W. N.	...	Madras Weekly Notes.
N. W. P.	...	N. W. P. High Court Reports.
N. W. P. H. C. R.		do.
N. & M.	...	Neville and Manning.
O. C.	...	Oudh Cases.
P. J. L. B.	...	Printed Judgments of Lower Burma.
P. L. R.	...	Punjab Law Reporter.
P. R.	...	Punjab Record.
P. W. R.	...	Punjab Weekly Reporter.
Q. B.	...	Queen's Bench Law Reports.

R. & R.	...	Russel and Ryans Crown Cases Reserved.
S. J. L. B.	...	Select Judgments, Lower Burma.
U. B. R.	...	Upper Burma Rulings.
Unrep. Cr. C.	...	Unreported Criminal Cases of the High Court of Bombay.
Weir.	...	Weir's Law of Offences and Criminal Law.
W. R.	...	Sutherland's Weekly Reporter.
W. R. Cr. L.	...	Sutherland's Weekly Reporter, Criminal Letters.

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ERRATA.

PAGE	LINE	FOR	READ
22.	11	when	prints
26	5	ref	refer
43	6	marks	the marks
52	26	ather	other
56	13	appears	appear
63	24	heen	been
64	6	in	is
81	15	husband and wife	a husband or a wife
81	17	husband and wife	a husband or a wife
88	7	in deed	indeed
105	3	396	390
105	23	or	of
110	28	face to face	face to face with
113	3	case	cases.
124	4	imparing	impairing
131	26	it is	is it
137	23	promp	prompt.
155	26	over which he	over which, he
181	18	ommission	omission
213	14	haing	having
263	3	before colon and dash	"procedure"
268	7	a	an
291	5	V. P.	U. P.
292	20	lnthis	lathies
294	20	malc	male
294	23	imprisened	imprisoned
294	32	person	persons
298	17	Ballia	Ballia,
300	7	accomplice	accomplices
303	8	impliments	implements
306	40	low class Hindu	low class of Hindu
306	26	gang	tribe
318	4	sams	same
318	7	altering	uttering
327	2	Sandar	Sandars

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CHAPTER I.

GENERAL PRINCIPLES OF INVESTIGATION.

1. FIRST INFORMATION REPORT.

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police Station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf. (Section 154 Cr. P. Code).

The First Information should always be recorded as soon as the information is obtained from a person seeking to give it. Any statement recorded several days after the commencement of the investigation and after there had been some development is not only no first information but has very little or no value at all as the original story, because it can be made to fit into the case as then developed. (*Emperor. V. Kampu Kuki. II. C. W. N. 554*). When information of a cognizable offence is brought by a Chowkidar, it should be recorded as First Information and in no case shall the Thana Officer defer doing so till he goes and examines the aggrieved person. The statement of the aggrieved person so recorded can in no sense be regarded as First Information. The Information on which a Police Officer has gone to the spot or otherwise commenced an investigation is obviously the first information under section 154 Cr. P. Code (*Bhut Nah Ghosh. 7 C. W. N.* 345). The

law requires that the actual words used by the informant should be taken down while recording first information (16 *C.W.N.* 145). It is however desirable that the informant should be questioned and all important facts connected with the occurrence distinctly elicited. The Police Officer is entitled to examine the person giving the information and the latter is bound to answer all questions relating to the case other than those the answers to which would have a tendency to expose him to criminal charge or penalty or forfeiture (*Emperor V. Parshram Ray Singh, I. L. R. 8 Bom. 216*). If the information be tendered in writing, it will be signed and dated by theperson presenting it. The mere fact that a written report is tendered does not make it unnecessary to take down the information from the reporter's own lips. If the man who brings a written information knows nothing of the facts of the case, he should be asked to state the circumstances under which he brings it. The officer recording the information should require the informant to distinguish what he professes to know personally from matters of which he has heard only second-hand. Refusal by the informant to sign a First Information Report is punishable under section 180 I. P. C. The report should also be signed and sealed by the officer recording it. In cases triable exclusively by the Court of Sessions and in special report cases the statement of the informant shall be read over to him in the presence of one or more respectable and uninterested witnesses, who shall also be asked to sign it.

First information may be given by a person acquainted with the facts directly or on hearsay. A vague rumour shall be distinguished from a hearsay report. It shall not be reduced to writing or signed by the informant, but entered in the general diary, and should it, on subsequent information, prove well-founded, such subsequent information shall constitute the first information. A telegram reporting the occurrence of a cogni-

zable offence shall be treated as a first information. For cases in which telegraphic reports should be sent by the officer recording the First Information see Rule 83, volume V. Police Regulations, Bengal.

II. JURISDICTION IN RESPECT OF INVESTIGATION.

Any officer in charge of a Police Station may, without the order of the Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XV relating to the place of enquiry or trial.

No proceeding of a Police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Any magistrate empowered under section 190 may order such an investigation as above mentioned (Section 156 Cr. P. Code).

Under the provisions of the above section the officer in charge of a Police Station may investigate a case if it can be enquired into or tried by a court which has jurisdiction over the Police Station area.

Every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed, (section 177 C. P. C.) (For place of enquiry or trial of particular offences, see commentaries on the respective sections).

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence

if the doer were capable of committing an offence, a charge of the first mentioned offence may be enquired into or tried by a court within the local limits of whose jurisdiction either act was done (Section 180 Cr. P. Code).

A charge of receiving or retaining stolen goods may be enquired into or tried either by the court within the local limits of whose jurisdiction the goods were stolen or by any court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained. If the theft had been committed outside British India the charge of dishonestly receiving or retaining the stolen property in British India may be tried in British India. Where a dacoity had been committed outside British territory but part of the stolen property was found concealed in British territory, it was held that a British Court had no jurisdiction to try the accused for dacoity, though it could try and convict them for retaining stolen property obtained by dacoity (*Reg. V. Lakh Govind, 1 Bom. 50*). Where a foreign subject, having stolen cattle in a foreign territory brought them into British territory it was held that he could be tried and convicted in British territory for dishonestly retaining stolen property although he could not be tried for the theft itself.

A charge of abetment may be enquired into or tried either by the court within the local limits of whose jurisdiction the abetment was committed or by the court within the local limits of whose jurisdiction the offence abetted was committed. (Section 180 Cr. P. C. ill. a). Where a foreign subject residing in foreign territory abetted the commission of an offence which in pursuance of that abetment was committed in British territory, it was held that a British Court had no jurisdiction to try the abettor. (*Reg. V. Pirtai 10 Bom. H.C.R. 356*).

When it is uncertain in which of several local areas an offence was committed, or where an offence was committed

partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas (Section 182 Cr. P. Code).

An offence committed whilst the offender is in the course of performing a journey or voyage may be enquired into or tried by a court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage (Section 183 Cr. P. C.).

The words "journey or voyage" do not include a voyage on the high seas or in a foreign territory (*Bapu Daldi 5 Mad 23*).

Where property was stolen during a short halt in the course of a journey it was held that the accused could be tried at the place of destination (*Queen V. Abdul Ali, 25 W. R. Cr. 45*).

The law relating to the trial of British subjects for offences committed out of British India has been laid down in section 188 Cr. P. Code.

III. REFUSING INVESTIGATION.

Section 157 (b) Cr. P. Code empowers an Officer in charge of a Police Station to refuse investigation of a case in which "there is no sufficient ground for entering on an investigation." An Officer refusing investigation of a case must record on the First Information Report the reason for such refusal.

In each case the Police Officer recording the information shall exercise his own discretion. The following general principle is laid down in the Bengal Police Regulation :—

No investigation shall ordinarily be made in (a) Cases in which the injured person does not wish for an enquiry unless the offence appears to be really serious, or may reasonably be suspected to be the work of a professional or habitual offender or a member of a criminal tribe or investigation is deemed desirable in the interests of the public.

(b) Cases falling under section 95 Penal Code, *i.e.* cases causing so slight harm that no person of ordinary sense and temper would complain of such harm.

(c) Cases in which the information shows the case to be purely of civil nature (Bengal Police Regulations, V. Rule 77).

While considering the question of refusing investigation the Station Officer should invariably consult his crime register in order to see the incidence of crime in the locality from which the case is reported.

IV. TAKING UP INVESTIGATION.

(A) Preliminaries before starting for the spot.

1. Tracking the accused :—

Where the first information discloses that the accused has taken, or is likely to take, a particular route after committing the crime, the Police Officer receiving the information should take immediate steps to track him. Success will depend on the promptness with wich this is done. Telegrams should be freely despatched, specially where the accused is believed to have used the Railway. For this purpose every Thana Officer should keep up-to-date time-tables of all local and neighbouring railways. Major Ramsay narrates the following incident in his "Detective Foot-Prints" illustrating how a fugitive thief was arrested at a Railway Station with the aid afforded by the Telegraph :—

"I had just returned rather late from my usual morning ride, when Babu N. C. D. was announced as urgently desiring to see me on important business. I lost no time in receiving my visitor who informed me that about one thousand rupees worth of property had been stolen from his house sometime very early that morning. The circumstances were these. Some weeks previously a Bengalee youth had gone to the Babu and represented that he was anxious to obtain employment, and begged to be permitted to lodge with him for a few days. The stranger was provided with food and lodging. Failing to secure a situation, he left to try his fortune in the North-West Provinces from where he returned some weeks later. After a stay of about 10 days on this occasion he left his host without saying good-bye who found that a silver-mounted clarionet, some wearing apparel, bank notes and cash to the value of five or six hundred rupees, and other miscellaneous articles of a total value of about one thousand rupees, had gone also. I expressed my regret that I had not been informed of this earlier in the day. My visitor informed me that he had been to my house between six and seven A.M. but that I had gone out riding, and my servants were unable to say where I had gone, or when I was likely to return. Meanwhile he had done all he could to trace the runaway, and the Police were in active search for him. It had been ascertained at the Railway Station that a man answering to the description of his late guest had been seen at the Station that morning, at the time the train for the North-West Provinces was due, at about 4 A.M. Having obtained this outline of the case, I questioned the Babu closely as to the personal appearance of the suspected thief. The description given had a strong family resemblance to the descriptions of many other suspected persons. I perceived that as it stood there was nothing sufficiently definite to warrant a Police Officer in detaining any one on the strength of it. I

therefore asked my informant if he had seen his guest bathing in the open, according to native custom. He replied in the affirmative. I then enquired if he had happened to notice any particular marks, such as scars or discoloration of the skin. I was rewarded by being told that the absconder had a patch on the left side of the breast bone, about the size of a florin, which was of a lighter colour than the rest of the skin. I also obtained the description of the clarionet case and of some of the stolen clothing. I then wrote a telegram to the officer in charge of Railway Police at Mogulserai, giving as full particulars as I could, consistent with due brevity. This accomplished I found that it would cost not less than rupees ten. I had not as much in the house, nor had my visitor any money with him. I pointed out to him however that it was essential that my telegram should be despatched without delay. I begged him to go to the Telegram Office, which was only some 300 to 400 yards from my house, and arrange with the Telegraph Master to have it sent off at once. A quarter of an hour from the time of his arrival had sufficed to see my visitor *en route* to the Telegraph Office. A reference to the Railway Time Table showed that the train by which the supposed thief had travelled would reach Mogulserai forty seven minutes later. From Mogulserai there was a branch line to the well known sacred City of Benares. There was, therefore, not a second to spare, as the absconder might make for Benares. In the meanwhile I despatched a Police Officer to make enquiries at a large town some 30 miles off, where the train would have halted *en route*, and where it was possible for the absconder to have alighted. The steps taken proved successful. The telegram reached the Police at Mogulserai shortly before the train left for Benares. A Head Constable got into the train, and quitting it the moment it arrived at its destination, took his position at the exit door for passengers. In due course a young man carrying a clarionet

case of the description given in my Telegram essayed to pass the barrier. He wore a coat of the description of one of the articles stolen. To make matters still more conclusive he was found to have a patch of the size of a florin of a lighter colour than the rest of his skin on the left side of the chest. Two days later the chief was brought to me with everything that he had stolen, less the few rupees paid for his railway ticket."

In cases in which foreign professional criminals are believed or suspected to have been concerned, as in a case of swindling by Muzzaffarpore Sonars, the informant should be questioned, as soon as he discloses the commission of the offence, as to the route the accused are likely to have taken, and every attempt should be made to intercept them on their way. The details should be communicated, where possible, by Special Police Telegrams, to all Thanas through which the accused are likely to pass, as well as to the Railway Police if there is a Railway near by. The Officer in charge will, at the same time, himself proceed, or depute a reliable subordinate, in the direction the accused have taken. There are cases in which the following up the track of the accused should be considered more urgent than going to the spot, and the investigating officer should decide as quickly as possible what is to be done.

(2) **Hue and cry notices** :—

In all cases of organised crime against property in which wandering gangs, foreigners or residents of other jurisdictions are known or suspected to have been concerned, as well as in important cases in which the accused have absconded after committing the offence, or in which identifiable property of large value has been stolen, hue and cry notices should be issued to the neighbouring railway, river or district Police Stations. They should be drawn up by the officer who records the first information report. In urgent cases the detals con-

tained in hue and cry notices should be communicated by special police telegrams and the notice with fuller details immediately despatched by post.

(3) Enquiry about the movements of known criminals or gangs :—

No general principle can be laid down regarding this, and the investigating officer should very carefully consider the circumstances of the case and decide if this should be done immediately after recording the first information or after visiting the place of occurrence. While a prompt enquiry may often lead to a good clue, there is at the same time the risk of spoiling evidence of crime unless the enquiry is managed very quietly. An open enquiry by questioning the suspect himself or his neighbours should not be made at an early stage of the investigation. Good results are likely to follow if the investigating officer can make, as promptly as possible, arrangements for quietly shadowing the suspect. For further details see "Dacoity."

(B) Visiting the place of occurrence.

This should be done with the least possible delay. The investigating officer should bear in mind that the criminal has already got the start, and the greater the dealy in taking up investigation the better will be his opportunities to do away with the evidence or trace of the crime.

While leaving the Police Station the investigating officer should take with himself a copy of the first informatin as well as notes from his Thana Registers regarding the crime and the criminals of the locality. The crime map should also be taken, also the district map if one is available. Every investigating officer should always carry with himself the following articles :—

(1) Pocket eddition of the Penal Code and Criminal

Procedure Code, as well as the departmental rules regarding investigation and prosecution of cases.

(2). Several sheets of good writing paper, blotting paper, carbon paper, tissue paper (for taking impressions of fine surfaces) and thick note paper.

(3). Blank forms, such as case diaries, search lists, summonses etc.

(4). Envelopes of various sizes.

(5). Pen, pencils, ink, gum and sealing wax.

(6). Tracing paper and tracing cloth, also ordinary cloth.

(7). A magnifying glass, a pair of compasses, a measuring tape, a brush and a camel-hair brush.

(8). Candle and matches.

(9). A bottle of plaster of paris and another of oil (for preserving footprints and impressions).

(10). Two small glass tubes for making simple experiments.

(11). A piece of soap.

(12). A good watch.

All these articles may be conveniently kept in a leather bag which can be carried on the person of the investigating officer. The bag should be replenished on return from every journey.

While on his way to the scene of occurrence the investigating officer should not carry with him any preconceived idea as to the case or persons concerned in it. If such an idea had been actually carried, it should be corrected after the investigating officer examines the local conditions, both in their general aspect and in relation to the facts of the case.

(C) Examination of the scene of occurrence.

(1) While inspecting a scene of occurrence the investigating officer should preserve an absolute calm. He must not fuss

about, draw his conclusions in the hearing of others or ask everybody useless questions. He should first of all quietly and attentively observe the whole situation and then the details which should be very carefully described in the report. The condition of the scene should in no way be changed, nor the position of any object altered, before it is accurately described in the report. The situation of each object found in the scene of the crime should be minutely given in the report before it is disturbed. The investigating officer should control the natural impulse of handling an object (such as an article left behind by the accused) as soon as it is found in the scene of occurrence, as the situation of the object may turn out to be of more importance than the object itself, but when once the object is moved from its original position it will be difficult to locate it again exactly where it was. The report giving the description of the scene of occurrence should be as accurate as possible. First, give a general sketch of the scene of the crime noting from which direction and by which way the criminal came and to which direction he went away, the places from which the witnesses have seen or could have seen anything, and all spots where traces of the crime or the criminals are found or where they could be expected but were not found. After the general sketch should be given a detailed description of the actual place of occurrence *i.e.*, in a case of burglary the place where the room was broken into, the description of the room itself, of its doors and windows, position of the screens and other articles. Next it should be described if there was any change in the position of the moveables contained in the room consequent on the commission of the crime, or any damage done to any article. Last of all, there should be given a clear description of the subject matter of the crime, such as a broken safe, a burnt house etc. Distances should

always be measured with a measuring tape. The points of the compass should be used for describing the positions of objects, and they should be described in relation to a fixed point in the house or locality.

(2) **Foot-Prints :—**

(*i*) *Observation of foot-prints.*

While investigating an offence against property the investigating officer should, as soon as he reaches the spot, carefully examine the footprints left on the scene of the crime and its vicinity. Decisive results should not always be expected as footprints are very rarely found entire and complete, even if they are preserved so as to remain intact, but a careful and patient examination may, in many cases, lead to valuable clues.

The traces of footprints found should be carefully guarded from damage. Choukidars and constables, who in many cases visit the scene of occurrence first, should be given clear instructions in this respect. If the footprint is on a hard substance covered with dust care should be taken so that the dust is not blown away.

The investigating officer should systematically train himself in observing footprints, otherwise he will be at a loss when he has to examine and note differences in a large variety of prints. Footprints should be looked for not only in the actual scene of the crime but as further away as possible, especially the back of the house, neighbouring garden and across the field. If a fresh footprint is found in such a place which does not appear to be the continuation of an ordinary walk, it should be closely observed after it is ascertained that none of the inmates of the house or neighbours walked that way very recently. If the investigating officer can single out a significant footprint which has probably a relation to the crime, let him follow it as closely as possible, and if it is done with care and patience the act of following the footprint will grow easier and

he will soon be upon a "good track." When a series of footprints apparently produced by the same pair of feet are found a very close examination of them will show if the man walked or ran. It should also be seen at the same time if the footprints themselves and their respective positions present any peculiarities, and from this he will be able to infer if the man whose footprints they are is of tall or short stature, takes long or short steps, limps dragging a foot behind or leans upon a support such as a stick. The nature of the route taken will also show if the man walked at night or in the day time.

The methods of observation of impressions left by booted feet are are different from those of bare feet. In the impression of a booted foot the investigating officer should note exactly the dimension of the sole and heel, the exact number of the marks of nail, both existing and missing, in the sole and heel separately, patches in the leather if there are any, and other such peculiar characteristics. In the case of an impression of a bare foot it is not of much importance to record its dimensions and peculiarities if the original impression can be preserved and placed side by side with the footprint of the suspect for comparison, but in the case of the impression of a booted foot, a detailed record of all the peculiarities is necessary. In all cases however the investigating officer should carefully note down in writing whatever he observes, and this note should be made at the time of the observation and not later.

When we get a series of impressions produced by the same pair of feet, a close observation of them will show if the man walked slowly, fast or ran. In connection with this the investigating officer should observe two things, viz, (1) *the line of direction* and (2) *the line of march.* The former is the line showing the direction in which the man is advancing, while the latter is the line, either straight or broken, joining the centre of the heels of the footprints. In order to draw any conclusions regarding

the characteristics of the walk or the man who walked, the *line of march* should be studied with reference to the *line of direction.* In a normal walk the man places the feet just one in front of the other so that the directing line is the same as the line of march. If the heels do not touch the directing line, but the right foot remains on the right and the left foot on the left of it, it indicates a loose or awkward walk like that of old men, women who are enceinte, or people with such diseases as hernia etc. A third mode of gait is produced when the right foot crosses to the left and the left foot to the right of the directing line. This sort of "crossed trail" is peculiar to drunken persons or loiterers.

The *length of step* is the distance of the middle of the heel of one of the footprints to the middle of the heel of the other. This distance depends upon the height of the man as well as the speed. It may be said as a general rule that a tall man has a long step, but there may be circumstances which modify this rule. A man walking with precaution, an old man, an invalid, or one affected with hernia or such other disease will have steps shorter than what a man of his height would ordinarily have. If the speed is not altered the length of the steps would ordinarily be the same in the case of the same person. An average pace is between 30 and 32 inches, it is about 36 inches when a man walks pretty fast and 40 inches when he runs If the length of the step is found unequal it may be presumed that the man walks limping, the healthy leg making the longest pace and the other one (either wounded or naturally defective) the shortest. The investigating officer may come across more complex irregularities in pace such as are found in the gait of badly wounded persons. The difference in such cases should be carefully observed and noted and a medical man consulted. While tracing footsteps the investigating officer should carefully observe indications a showing variations from ordinary

walking, such as a stoppage, a longitudinal or lateral jump, slow walking, running or walking backwards etc. In backward walking the steps are shorter, as one is not accustomed to this sort of locomotion, and the directing line is uncertain.

(*ii*) *Preservation of foot-prints* :—

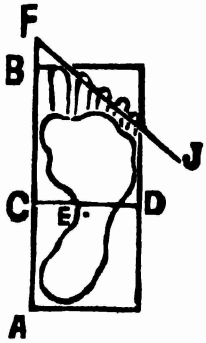
In every case the investigating officer should carefully preserve some of the distinct footprints so that they may be compared with the foot-prints of the suspect when he is traced. If the foot-print is on a piece of wood or stone or masonry, the portion containing it should be carefully removed and carried away. If it is not possible to take away the original imprint, photograph of it should be taken and then a drawing made. If an impression is found on a soil which it is not easy to remove without spoiling the impression, and it is found necessary to form a firm crust which will not break, it may be done by dropping upon the impression and round about it either carpenter's glue or silicate of potassium and by spreading this with a soft brush or a piece of cotton wool. If the impression is a coloured one it should be seen, with a few drops of glue or silicate, if the colour disolves in it, and if it does, the spreading should not be made. When a hard crust has been formed the surface containing the impression may be removed with a deep thrust of the spade. The impression should then be photographed as soon as possible as it may deteriorate on account of the earth having been treated with silicate.

(*iii*) *Comparison of foot-prints* :—

When the suspect is traced and it is necessary to take his footprints for the purpose of comparing them with the foot-prints found on the scene of occurrence, the best method is to make him walk on a sheet of paper after having his feet placed

on a piece of cloth moistened with a solution of some finely powdered colour. Ordinary ink diluted in water will do well for the purpose. The investigating officer should never make the suspect place his feet on the original footprint. It will spoil the original, and even if it tallies, the evidence of their being similar will not at all be convincing as it is nothing but the inference of the investigating officer from his own observation which may not always be very accurate. An experiment with the original footprint should never be made unless under extraordinary circumstances the investigating officer is compelled to do it. In the latter case he will do everything possible to obtain a representation of the footprint before touching it ; i.e. the details should be clearly noted in a report, the reproduction drawn, exactly measured and the measurements noted down. It should also be photographed if possible. If the investigating officer wants to be perfectly accurate the suspect should be made to walk upon a substance similar to that on which the original impression was made ; both the impressions should then be reproduced on a tracing paper. It should not be forgotten that the phenomena of drying and other modifications of shape which naturally take place on account of the particular nature of the soil may, in many a case, present slight differences between the original impression and that obtained for comparison.

In order to make comparison between two footprints each should be accurately drawn on a tracing cloth ; the originals should not be damaged by drawing lines etc. on them. For taking measurements of footprints for the purpose of comparison there are two convenient methods. Where the original impression is found intact the following lines, as shown in the figure, may be drawn on both the impressions :—



(1) AB—the total length of the foot.

(2) CD—the greatest breadth measured perpendicularly to AB.

(3) CE—the depth of the bend of the sole.

(4) The angle CFJ, the slant of the toes.

This method is not however convenient when the original impression is more or less incomplete. In such a case the investigating officer should take in the original impression two such points, as far apart from each other as possible, as can be definitely localised upon the footprint to be compared, and draw a line between the two points in each impression. A third point should then be found out which can be definitely localised in both the impressions and a perpendicular should be dropped from it on the line. The intersection gives a point in each of the impressions from which other points clearly determined on the impressions may be measured and the distances compared.

In cases in which the investigating officer cannot formulate his opinion from his own observation, the aid of the expert or a medical man should be obtained. If the criminal had booted feet, specialists such as boot makers may be consulted. The assistance of experienced sportsmen trained in the observation of the traces of games may also be sought for if it is available.

There might be cases in which it will be found necessary or convenient to place the footprints before others, such as experts or the jury. The best method is to carry away the original impression where this is possible. To do this the soil at a distance of a few inches from the footprint on each side should be neatly and carefully dug so as to leave a mound containing the footprint. The mound is then raised up, placed in a box and carried away on the head of a cooly. The top of the mound may, if convenient, be sawed out of its base.

If, however, it is not possible to remove the impression, an attempt may be made to obtain a reproduction. This may be done by pouring into the impression a mixture of plaster of paris and water or molten wax and carefully raising the cast when it solidifies. If possible the walls of footprints may, before the plaster of paris or wax is poured, be solidified to some extent with a solution of shellac in alcohol or with ordinary joiner's varnish. This solution may be carefelly spread upon the footprint with a piece of cotton wool. If plaster of paris or wax are not available, a cast may be attempted with a paste of flour and water or with cement or clay.

(3). Finger-Prints :—

While inspecting a scene of occurrence the investigating officer should invariably look for finger marks, especially on glass, metal or polished wood. Bottle torches left by dacoits should be very carefully examined as clear finger impressions may be found on them, they may also be found upon the charred surface of an ordinary torch, on bamboo mattings or door posts. Whenever there is in the scene of the crime any article with a smooth surface which appears to have been handled by the criminal, it should be very carefully examined by a magnifying glass. If any finger impression is observed, the investigating officer should always enquire and ascertain if any one other than the offender handled the article

"Finger marks on glass, polished wood, metal and lacquer work may be intensified by sprinkling the surface with a small quantity of a powder, known to Chemists as "Gray Powder", which should then be gently shaken or brushed off with a camel hair brush. Should the substances be white in colour, such as paper, wood etc, "Graphite" may be used instead of "Gray Powder". This treatment has the effect of making

visible impressions which cannot be seen with the naked eye. Articles which may have been handled by criminals should always be treated in this way".

"Objects appearing to bear impressions should be forwarded to the Criminal Investigation Department for opinion. Great care should be taken not to make other finger impressions on any such article forwarded. It should not be handled unless absolutely necessary, when something with a smooth surface should be slipped underneath. The article should be carefuily lifted into the box in which it is to be packed, and nothing with a rough surface should be allowed to come into contact with the portion bearing the finger impression. In important cases, or when exhibits are very heavy or large, they may be sent down by special messenger. A label should be attached to each article, giving the name of the officer forwarding the package, and every care should be taken that the identity of the exihibit can be proved, as in the case of articles sent to the Chemical Examiner".—Bengal Police Regulations, Vol. VI Rule 24.

Before sending a finger print for examination by an expert the investigating officer can hold a rough examination of it or compare it with that of a suspect. He may look into the general form of the pattern and see if it is an arch, loop, whorl or composite. "A pattern is an '*arch*' when the ridges in the centre run from one side to the other of the bulb without making any backward turn or twist, a '*loop*' when there is a single backward turn but no twist, a '*whorl*' when there is a turn through at least one circle, and a '*composite*' when there is any combination of the arch, loop or whorl, or where the impression gives the appearance of a loop in respect of the majority of the ridges and a whorl in respect of few ridges at the centre or side". If the patterns of two fingerprints do not agree it may be definitely concluded that they are not the

impressions of the same person, but if they do, a closer examination may be made such as counting the number of ridges between fixed points or looking into such other minutiæ appearing in each fingerprint as bifurcations, junctions, breaks and the like. Unless the differences between two impressions are distinctly marked, the investigating officer should never rely absolutely on his own examination but should have them examined by an expert. In each case the original impression should be photographed and enlarged as soon as possible.

Finger Prints in Blood.

In every case of offence against property attended with murder or bloodshed the investingating officer should look for fingerprints in blood. In the majority of cases it will be a difficult task to find them out as they are generally small and made up of fine lines and are often to be found in out-of-the-way places. Impressions are to be looked for upon instruments used by the criminal, such as the handle of a knife or hoe, a crowbar or a lathi, also upon furniture or household utensils, doors, windows and mat walls. The articles which the criminal had handled while searching for money or valuables should be very carefully examined. In cases of offence aginst property attended with murder clear impressions may also be found on those parts of the dead body which are smooth and hairless. If such impressions are found it should be carefully seen if they are those of the fingers of the victim himself, as, on being wounded, he might have placed his hand upon the wound and then on his own person or some article which lay by.

When impressions are found the investigating officer should ascertain by a careful examination the particular finger or

fingers of which they are prints. In order to assist accurate comparison the original impression of the bloody finger should be photographed and enlarged. The fingers of the suspect may be examined through a magnifying glass and compared with the enlarged fingerprint. If similarities are observed, a print of the suspect's finger may be taken with the blood of a goat or sheep on the same background as the original. This impression should then be photographed and enlarged in the same proportion as the original, and the two prints compared, will present striking similarities if they are the when of the same finger.

Preservation of Blood Mark.

In order to assist the expert in coming to an accurate conclusion blood stained articles should be very carefully packed and transmitted. Each packet should contain a clear note, both inside and outside it, giving the description of the article to be examined. The article containing the blood mark should be so carefully fixed in the packet that it cannot move at all as friction with the packing material is likely to damage the blood stains. "Blood stained clothes will only be packed in trunks, care being taken to fix them so that the blood marks are uppermost; holes are pierced in the trunk through which are passed cords with which the clothes are securely tied, being very careful the meanwhile not to damage the blood in any way. Blood stains upon paper do not require particular attention, specially when they are quite dry and do not form thick crust; it is best to place them between two sheets of paper and put them away in a note book, or among the papers belonging to the case. If the marks are upon small pieces of wood or splinters or upon shreds of cloth, in short upon

any small or light article, boxes of corresponding size must be obtained, the articles placed at the bottom, and fixed thereto with string passed through the box and fastened outside. More difficult is the packing of large and heavy articles such as spades, hoes, hatchets, axes, hammers, bars of iron, heavy sticks etc ; all these objects ought to be packed with much care, for they may fall and all the blood be knocked off." (—Hans Gross, Criminal Investigation, page 588-589). When a blood stained article is packed in a box and fixed to it by means of cords passing through holes made therin, care should be taken to see that the cords do not touch the blood stains. If there are blood stains on both sides of an article like an axe it should be placed upon pads or cushions of paper fixed on to the handle with nails. When there are blood stains upon an article, such as a big bamboo, which it is difficult to pack in a box and has therefore to be transported without packing it should be very carefully carried and every precaution should be taken to safeguard the stains. It may be done conveniently by attaching small pieces of bamboo above and below the stains with strong cords and surrounding the whole with stout paper so that it will leave the stains quite free, at the same time protecting them from external damage. If such an article is carried by a Choukidar or a Constable, the portions containing the blood marks should be pointed out to him and he should be instructed to take proper care about them whenever he has to place the article on the ground or on any conveyance *en route.*

(4) Other impressions :—

Besides finger-prints and footprints the investigating officer should look for all marks or imprints produced, in some way or other, in connection with the commission of a crime. Such, for example, are impressions of sticks or lathies, marks of

horses or dogs, marks made by carriage wheels etc. In cases where violence has been used the investigating officer should look for marks of bullets, shot, lathi blows, stones or other articles thrown. All such marks found should be carefully described in the report and, if convenient, should either be traced on tracing cloth or moulded.?

(D). Examination of witnesses :—

Any Police Officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to criminal charge or to a penalty or forfeiture (Section 161 Cr. P. Code).

According to section 160 Cr. P. Code any Police Officer on investigation may, by order in writing, require the attendance before himself, of any person being within the limits of his own or adjoining station who appears to be acquainted with the circumstances of the case. The order must be in writing, otherwise non-attendance is not punishable under section 174 I. P. C. *(Purshotam, Bom, Cir. Rul. 18, 1896).* This section does not authorise a Police Officer to compel the attendance of an accused person to answer a charge or produce documents *(Emperor Vs. Samada Chetti, I. L. R. 7 Mad, 274).* If such an attendance is necessary and the man does not attend voluntarily, he should be arrested if the offence with which he is charged is cognizable. A Police Officer can not arrest or detain a person whose evidence is required for the purpose of an investigation ; he may, by an order in writing, require the attendance of the person and the latter is bound to obey the order, but in no case can the Police Officer compel a witness by force to attend before him *(Queen Vs. Behary*

Singh 7 W. R Cr 3). A Magistrate has no authority to issue a warrant for the production of a witness at an investgation by a Police Officer, but only before his own Court. *(Emperor Vs. Jogendra Nath Mukherjee, 24 Cal 320).* A Police Officer may summon parties to a Police Station for the purpose of obtaining information from them ; but if the voluntary action of such parties is in any way interfered with, such interference would constitute an arrest. Police Officers, when causing the attendance before them of Railway employees, must send immediate information to the head of the department under which such employees are serving. When the Police investigate a case and the examination of women is found necessary, it is advisable to compel the attendance of a number of them at the Police Station and the examination may, as well, be conducted at the residences or residence of the women. *(Haladhar Bhumij Vrs Subinspector of Hura O. P. 9 C. P. W. N. 199).*

It is not obligatory upon a Police Officer to reduce into writing any statements made by a witness examined under section 161 Cr. P. Code *(Reg. V. Uttamchand Kapurchand, 11 Bom H. C. R.* 120). "The statements of important witnesses should be recorded under section 161 Cr. P. Code in all heinous cases, but not ordinarily in other cases. But it is open to the investigating officer to record the statement of a witness who he thinks is not speaking the truth or is likely subsequently to alter his statement. A dying declaration should always be recorded under section 161 Cr. P. Code. Heinous cases may be held to include all cases triable exclusively by the Court of Sessions and all cases specially reported." Bengal Police Regulations, Vol. V. Rule 137.

According to section 162 Cr. P. Code no statement recorded by a Police Officer in the course of an investigation shall be signed by the person making it. "All such statements shall be signed and dated by the officer recording them and the

superior officer locally supervising the case. No such recorded statement is in itself admissible in evidence. When, however, the witness, whose statement has been so recorded, is called for examination by the prosecution, the accused is, under tfsection 162 Cr. P. Code, entitled to request the Court to ref to the statement, and the Court is bound to do so. After such reference the Court, if it thinks it expedient in the interests of justice and not otherwise, may direct that the accused be furnished with a copy of the statement. The witness who made the statement may afterwards be questioned with regard to it in order to impeach his credit as provided in section 155, Clause (3), of the Indian Evidence Act, 1872, and, should he deny that he said anything recorded therein, the Police Officer who recorded the statement may be examined with regard to it, and shall be allowed to refresh his memory by referring to the whole or any portion of the statement in order to contradict the witness."—*Bengal Police Regulations, Vol. V. Rule 137.*

Dying Declaration.

If a person whose evidence is required is in imminent danger of death,his statement shall be recorded by a Magistrate, whenever possible. When this can not be managed, and it becomes necessary for some other person to record a dying declaration, this shall be done, whenever possible, in the presence of the accused or of attesting witnesses. A dying declaration made to a Police Officer shall be signed by the person making it, under the provisions of section 162, Cr. P. Code.—*B.P. Regulations Vol. V. Rule 113.*

It is advisable where a dying declaration is elicited by questions to set out the questions and answers, and if possible it

should be taken in the presence of the acused who s hould then be allowed to cross-examine if he likes—(*6 C. W. N. 73.*)

Where the deceased at the time of questioning was conscious and able to make signs in response to questions asked, the questions put and the signs made, taken together, might properly be regarded as *verbal statements* made by a person as to the cause of her death, within the meaning of section 32, Evidence Act, and therefore evidence to prove the questions put and signs made was admissible (*7 All. 385 F. B.*).

When a dying declaration is recorded *the writing itself* cannot be admitted in evidence to prove the statement made. The statement made by the deceased might be proved by persons who heard them, and the writing may be used for the purpose of refreshing the witness' memory. (*10 C. L. R. II; 8 Cal. 311*).

A dying statement which has not been proved by taking evidence of the Magistrate who recorded it should not be accepted in evidence without such proof. The fact that the Magistrate who recorded the statement is the same as the Committing Magistrate is legally insufficient to prove the dying declaration. (—*13 Cr. L. J.* 225.)

When a dying declaration is elicited by questions, leading questions should be avoided as much as possible, as in the condition of the person making the statement "there is always a great danger of leading questions being answered without their force and effect being freely comprehended." (*Reg. Vs. Mitchel, 17 Cox. P C. 503., 507.*)

Method of Examination of Witnesses.

The examination of witnesses should be conducted by the investigating officer with the utmost care and patience.

In the first place he should make it a point to go to his would-be witnesses rather than summon them to his presence, for by so doing he reduces the chance of their being tampered with, besides giving them less time to get nervous or to speculate as to the effects of their telling the truth. Secondly, witnesses should be examined separately and not in the hearing of each other or of any individual whatsoever. The investigating officer should always bear in mind that a police investigation is more or less a confidential affair and the more an officer succeeds in keeping it screened from the view of others the better he will be able to secure the confidence of those who are acquainted with the facts of the case or are in a position to give valuable information.

While examining a witness the investgating officer's principal task should be to decide if what the witness is speaking is the truth, and the whole truth. To detect where a witness is lying is rather a difficult affair, specially in the case of an inexperienced investigating officer. It is therefore necessary that every particular regarding the witness should be ascertained before his statement is accepted or rejected. Every witness should be examined quietly, prudently and thoughtfully, and the investigating officer should see that no important point is omitted. To obtain the truth from a witness the investigating officer has to face two principal difficulties: On the one hand the witness may have the best intention to tell the truth but he makes inaccurate statements on account of bad observation or defective comprehension, while on the other hand he may have the deliberate intention of lying. In the latter case the investigating officer should conduct the examination with much patience and prepare his interrogatories from beforehand so that he can take the witness by surprise and "probe him to the bottom". A keen and minute cross-examination will often elicit facts which, either by themselves or on comparison with

the facts obtained otherwise, will show the witness in his true colour. When once a witness is confronted with facts which he cannot get over, the investigating officer has only to follow up in the same lines to pierce the whole tissue of lies, and a bit of steadiness will make the witness admit that he is lying, and he would probably give his reasons for doing so. This is indeed a tedious task, but the investigating officer should not be afraid of such worries if he intends to arrive at the truth. A lie must always have a motive, and when this is not given out by the witness himself, the investigating officer should make a patient search for it and it may perhaps be found that the witness is personally interested in one of the parties or in the result of the investigation, or has himself some connection with the occurrence itself.

The case is not less difficult when the witness intends to tell the truth but makes an inaccurate statement of what he has observed. This may be due to defective perception or weak memory or such abnormal conditions of his mind at the time of occurrence as strong feeling, terror, or acute pain resulting from injuries received, specially on the head. Power of observation depends to a large extent on the natural qualities and culture of a man, but other factors, such as the age and the sex of the witness, are also of importance and should always be taken into account. The next thing is the memory of the witness, or his power of recalling the impression produced when the fact deposed to by him was observed. This depends primarily on the degree of precision with which the original perceptions were made, but the power of making these perceptions re-appear varies with different persons. An exact reproduction is often impossible and there must be gaps which have to be filled up. One may fill up these gaps accurately by keeping the

whole picture in view, while another does so inaccurately by imagining fanciful things as well as by inserting facts observed or heard at a later stage of the transaction. In a case like this it is better for the investigating officer to warn the witness that he should state exactly what he distinctly remembers, and the tendency of the witness to bring analogy or imagination into play should be checked as soon as it is apparent. A witness who has a weak memory should always be given time to think and reflect, and the investigating officer may also help his momory by reminding him of some contemporaneous incidents or states of things which may furnish *data* leading directly to the recollection of the facts about which he is questioned. Another method of assisting the memory is to place the witness in the same surroundings in which he made the observation. Impressions which act simultaneously on the brain are so associated together that when one set of them are reproduced they will reconstitute others which have wholly disappeared from the mind. This process is specially useful in complicated cases in which the sequence of events has to be fixed or the part played by each of several actors is to be determined.

Unusual excitement, terror or pain produces all sorts of mistakes in perception. A man in such a condition would ordinarily fail to observe things, or to observe them correctly, or may even suffer real hallucinations and see or hear what was absolutely non-existent. Dr. Hans Gross gives among others the following illustrations :—

"Recently the author had the opportunity of verifying this by an analogous circumstance. He was present at an execution at which, for some reason or other, the executioner wore gloves. After the execution he asked four officials, who were present, what was the colour of the executioner's gloves. They replied, respectively, black, gray, white, while the fourth stoutly

maintained that the executioner wore no gloves at all. Yet all four were in close proximity to the scaffold, each replied without hesitation, and all four were still perfectly confident that they made no mistake."

"A brewer, a veritable Hercules, in the prime of life and in no way nervous, having jumped from a smashed carriage, took to running across the fields to the neighbouring town, three quarters of an hour's distance, in the full belief that he saw and heard the locomotive of the train puffing and blowing after him."

"A miller's man had received in a riot a blow on the head from a stick, so violent that his skull was fractured and he remained for a long time in an unconscious state. Questioned two days afterwards he stated with perfect confidence that the man who struck him was very tall and with a long black beard. Fortunately among all persons mixed up in the affair there was none that in the slightest degree answered this description, besides several witnesses affirmed that the culprit was a short young nan with a fair moustache. If there had been no eye-witnesses, and if a man answering the description given had been mixed up in the affair, he would certainly have been arrested on the strength of the clearness and certitude of the statement made by the wounded man. The latter, it may be remarked in passing, had no motive for shielding the guilty man, as they were perfect strangers. On his restoration to health he was again questioned, when he deseribed the same person as the other witnesses, but explained that it appeared to him, streched in a semi-conscious state on his bed, that a tall man with a long black beard was trying to drag him from the bed."

If it appears to the investigating officer that the witness was in a state of excitement or agitation at the time of occurrence, his statement must be accepted with extreme caution.

If there are glaring inconsistencies and improbabilities when the statement is compared with those of other witnesses, there is not much difficulty and the investigating officer is at once put upon his guard. The case is however different when the witness gives in perfect good faith a fairly consistent story but introduces details which had either been absolutely non-existent or had been incorrectly observed by the witness. The only course which should be adopted by an investigating officer in a case like this is to "reconstitute" the whole afflair as it appears from the statements of the other witnesses and the circumstsances of the case, and leave out of account the statement of the exceptional witness. If, by doing this, the whole case can be easily built up and the introduction of this witness' statement brings in inconsistencies and improbabilities, the statement may safely be rejected as unreliable.

Whenever an investigating officer finds that witnesses, who have apparently no motive for lying, have told different stories regarding a particular affair, he should try to discover the cause of the difference between their statements. As has been noted above, the differences might be due to more or less accurate observation on the part of each witness, but it should also be seen if a witness had not been pressed too far and driven to give out more than he actually knew. The investigating officer should certainly question a witness with keenness,—specially an Indian witness who always suspects that the investigating officer is seeking to implicate him in the case and hence begins his statement by saying that he knows nothing,—but he should at the same time do it with care, calmness and accuracy. A witness should never be harrassed into making a false statement.

(E) House Search.

Whenever an officer in charge of a Police Station or a Police Officer making an investigation, considers that the production of a document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing according to the directions of the summons or order, or when such document or thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) It he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search and he shall deliver such subordinate officer an order in writing specifying the document or thing for which search is to be made, and the place to be searched ; and such subordinate officer may thereupon search for such thing in such place

(4) The provisions of this code as to search-warrants shall so far as may be, apply to a search made under this section.—*Section* 165 *Cr. P. Code.*

Section 94 Cr. P. Code runs as follows :—

(1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay any officer in charge of a Police Station considers that the production of any document or other thing is necessary, or desirable for the purpose of any investigation, inquiry, trial or other

proceeding under this code by or before such Court or Officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, Sections 123 and 124, or to apply to a letter, post-card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

(If any such letter, post-card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities is required for the purpose of any police investigation, the investigating officer should report the matter to the Superintendent of Police who is empowered under section 95 Criminal Procedure Code to require the Postal or Telegraph Deparment to cause search to be made for and to detain such document, parcel or thing pending the order of the District Magistrate. The District Magistrate may, according to clause (1) of this section, require the postal or Telegraph authorities to deliver such document, parcel or thing to such person as such Magistrate directs).

Section 165 does not authorize a general search on the chance that something may be found. The search must be for a specific article which has been or can be made the subject of an order to produce under section 94. If a written order is given to a subordinate police officer, the specific

thing for which the search is to be made must be noted in the order. Such vague expressions as "stolen propery relevant to the case" should not be used *(16 C. W. N. 1078.)*

A Police officer has no power of search under this section if the offence which he is investigating is non-cognizable (24 *Cal.* 691)

Section 166 Cr. P. Code :—

(1) An officer-in-charge of a Police Station may require an office-in-charge of another Police Station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own Station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found if any, to the officer at whose request the search was made.

A Police Officer has no power to search any place beyond the local limits of his jurisdiction. If such a search is necessary the procedure under section 166 must be adopted. A Police Officer conducted a search in a house outside the local limits of his Station accompanied by a police constable of the Station in the jurisdiction of which the house was situate, but the constable had no order from his own officer. They were assaulted while conducting the search ; held that the search was illegal and there could be no conviction under section 353 I. P. Code. *(16 Cr. L. J. 589).* The provisions of section 103 Cr. P. Code are to be observed when a search is made uuder section 165 or 166 Cr. P. Code. Section 103 runs as follows :—

(1) Before making a search under this chapter, the Officer or other person about to make it shall call upon two or more

respectable inhabitants of the locality in which the place to be searched is situate, to attend and witness the search.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places where they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub section (3) a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

This section does not justify the view that the persons called upon to witness a search are to be selected by any person other than the officer conducting the search (*21 M.L.R. 83*). The witnesses selected should be respectable and unconnected in any way with the Police. It is objectionable to be constantly calling the same person to witness the search, and to do so is likely to prejudice the mind of a trying Magistrate against the prosecution. (*4 L.B.R. 121*). The word 'locality' does not mean the same quarter of the town as the place searched (*12 Cr. L. J. 479*). The stress is on the word 'respectable' and not on the word 'locality' (*11 Cr. L. J. 746* (*Bur*). Failure to call inhabitants *of the locality* as witnesses does not make a search illegal (*21 Madras L. R. 83*). The occupant of the place searched should be given the option of being present and not that he is to be allowed to be present

only if he demands it. The word 'occupant' is not intended to cover every person who may happen to be in the place at the time of the search but it means a person residing in or being in charge of the place (vide Section 102).

Unless the search-list is signed by the witnesses the search would not be legal (*7 Cr. L. J. 411*). A search witness is not punishable under section 187 I. P. C. if he refuses to sign a search list (*21 Madras 83*). After a search list has been signed, it is not proper to make additions thereto, but such additions to an already completed list do not constitute a breach of this section so as to invalidate the whole search, nor is the omission of unimportant articles a circumstance invalidating a search (*15 Cr. L. J. 523*). If a Police Officer making a house search contravenes the provision of this section he is liable to punishment under section 166 I. P. C. or under the Police Act (*12 Cr. L. J. 489*). If an officer searches a house without calling two witnesses and is obstructed or resisted in the search, the person giving such obstruction or resistance can not put forward the omission as a justification for his action so as to bar a conviction under section 353 I. P. C. (*19 Madras 349*).

"The officer conducting a search should take precautions to prevent the possibility, on the one hand, of any articles being introduced into the house without the knowledge of the inmates, and on the other, of any articles being taken out of the house while the search is in progress. (He should therefore allow himself and his assistants as well as the witnesses to be searched.) Search should be made in the presence of the owner or some one on his behalf. The presence of search witnesses must not be looked upon merely as a formality, but they must actually be eye-witnesses to the whole search and must be able to see clearly where each article is found. They should then sign the search list. If any search-witness be

illiterate, it should be read over to him and his left thumb impression should be taken on it. Where the witnesses do not know English it should be written in the vernacular. The suspected person whose property is seized should, if present at the search, also be asked to sign the list. Should he refuse, a note will be made to this effect and it should be certified to by the witnesses. The suspected person, or in his absence the person in charge of the house or place searched, should be given a copy of the search list. He will be given an opportunity of comparing it with the original and be asked to sign an acknowledgment for the copy on the original list. Should he refuse, a note to that effect should be made and should be certified to by witnesses.

Only searches for any specific article, which is known or reasonably supected to be in any particular place or in the possession of any particular person, can be made without warrants. General searches should not be made without warrants, as such a procedure has been held to be illegal. No place should be searched without a warrant, merely because the occupier is a registered bad character or absconding offender. Such a search should be made only under the circumstances given in section 165 Criminal Procedure Code, and when the Police officer has reason to believe that the thing searched for will be found in the place to be searched. Provided that reasonable suspicion exists and definite article or articles is or are searched for, the Police are entitled to search the house of an absconded offender, whether he has been proclaimed or not. Police officers should note in their diaries the reasons for search, though they are not obliged to give the name of the person upon whose information they act. The name, father's name, residence etc. of any person producing keys of any locked receptacles or claiming ownership of articles seized should always be noted in the case diary.

The law does not require a search under the Criminal Procedure Code to be made by day light; but there are advantages in searching by daylight, and a searching officer should consider whether a house search should proceed by night or whether daylight should be awaited. Matters should be so arranged as to cause as little inconvenience as possible to the immates, and specially the women.

When suspected property is found in a house all the property in the house is not to be seized. Property seized must be either alleged or suspected to have been stolen or found under circumstances which create a suspicion of the commission of an offence.

The number of witnesses required to attend a house-search depends on the circumstances of each particular case, and no hard and fast rule can be laid down. So far as possible, these witnesses should be got from the same or adjoining villages, but in cases in which this is impossible, the Police Officer may exercise his discretion in choosing outsiders. Care should be taken that the witnesses are, so far as possible, unconnected with any of the parties concerned or with the Police, so that they may be regarded as quite independent. Whenever possible, the presence of the Panchayet or headman of the village shall be obtained to witness a search. Under no circumstances should a spy or habitual drunkard or any one of doubtful character be called as a search witness. Reasons for rejecting any person as a witness to the search should be noted in the Case diary."—*Bengal Police Regulations, Vol. V. Rule 124.*

(F) Arresting accused or suspect.

Section 54 Cr. P. Code :—Any Police-Officer may, without an order from a Magistrate and without a warrant, arrest :—

Any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made,

or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

The power conferred by this section may also be exercised by a Police Officer at a place beyond the limits of his Station (*16 Cr. L. J. 15*). Arrest by British Police outside British India is illegal; similarly arrest in British territory by the Police of a Native State is illegal.

"What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere surmise or information. Still less have the Police any power to arrest the persons, as they appear sometimes to do, merely on the chance of something being hereafter proved against them (*7 W. R. 3*). Before an arrest is made, the Police Officer should have some tangible legal evidence before him to justify the reasonableness or credibility of the accusation or suspicion.

"The power conferred by this section is discretionary and the Police may not exercise it in petty cases, when a complaint has been made. In ordinary cases, when the offence charged is not of a serious description and there is no likelihood of the accused trying to escape, arrest need not be made until the enquiry has at all events proceeded so far as to satisfy the Police Officer that the charge can be properly substantiated before a Magistrate. But in grave cases such as dacoity, murder and the like, when there may be subsequently difficulty in discovering the whereabouts of the suspected person or danger of his absconding, the investigating officer should exercise his power of arrest as soon as it appears that the complaint or suspicion is a reasonable one. If it turns out that the person arrested is not the guilty party, he can at once be released on bail, or upon his own bond, the circumstances being set forth in the Case diary."—*Sohani, Cr. Pro. Code, page 85.*

"A Police Officer to whom a complaint of a cognizable offence is made ought, if there be circumstances in the case which lead him to suspect the information, to refrain from arresting persons of respectable position, and leave the complainant to go to a Magistrate and convince him that the information justifies the serious step of issue of warrant of arrest.—*Ratanlal 795*.

An arrest in a cognizable offence may be made by a Police Officer on a telegram. A Police Officer is also justified in making an arrest when he knows that a warrant for a cognizable offence has been issued though he has not the warrant.

There may be cases in which it is prudent to defer the arrest if by doing so there is a likelihood of obtaining incriminating evidence against the accused by watching their movements. There may be other reasons, e.g., want of satisfactory evidence, for postponing immediate arrest. In every case the investigating officer should act with sufficient caution and self-restraint, and should decide after careful consideration at what stage of the investigation the arrest is to be made. If the circumstances of the case require postponement of arrest and watching the movements of the suspect, the investigating officer should take particular care to see that the suspect remains a free agent and no restraint of any kind is exercised over his movements. "An Officer in charge of a Police Station has no legal power to summon before him any person accused of an offence. The only manner in which attendance of such person can be enforced is by arrest. Whenever an accused person is sent for and made to attend before an investigating officer, he is to be considered as having been arrested, and to be entered in the return accordingly. 'Police custody' includes custody on the authority of the Police ; every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom shall be considered as in custody. A Police Officer who, without himself

arresting a person, directs some one of the neighbours to take charge of him, shall be responsible in the same way as if he had made the arrest himself. Requiring a person's attendance by letter and deputing a Constable to accompany him with orders to prevent him from speaking to any one amounts to an arrest."—*B. P. Regulation Vol. V.*

No arrest can be made in foreign territory without a warrant and the warrant shall go through the regular channel. When it is necessary to have a person, who has taken refuge in a foreign territory, arrested, a report should be submitted to the District Magistrate and extradition warrant prayed for, provided the offence is extraditable.

When an arrest has to be made in an adjacent district, a Police Officer acting under the provisions of section 58 Cr. P. Code, shall, except in cases of extra-ordinary urgency, communicate with the nearest Police Station of the district entered and obtain help therefrom in apprehending the offender. Prisoners and property shall invariably be taken to the nearest Police Station after arrest. Such arrests shall have to be reported to the Magistrate of the district or sub-division in which they are made.

When the immediate arrest of persons employed in the Railway, telegraph or post office service would cause risk and inconvenience to the public, the investigating officer shall make arrangements to prevent escape and apply to the proper quarters to have the accused relieved. In cases in which immediate arrest can be made, without risk or inconvenience to the public, notice of the arrest shall at once be sent to the official superior of the accused to enable him to arrange for his duties.

"Directly an accused person is placed under arrest, the investigating Police Officer shall ask him whether he has any complaint to make of ill-treatment by the Police, and shall

enter in the case diary the question and the answer. If an allegation of ill-treatment is made, the investigating officer shall there and then examine the person's body, if the prisoner consent, to see if there are any marks of ill-treatment, and shall record the result of examination. He shall further consider and note whether there is any reason to believe that marks found are attributable to other causes than ill-treatment, such as resistance to arrest. If the prisoner refuses to allow his body to be examined, the refusal and the reason therefor shall be recorded. If the investigating officer finds that there is reason to believe the allegation of ill-treatment, he shall forward the prisoner with his complaint, the record of corporal examination, any other evidence available, and if possible the Police Officers implicated by the prisoner's complaint, to the nearest Magistrate having jurisdiction to enquire into the case." (Bengal Government order No. 3040 P. D. dated the 14th August 1912).

The investigating officer shall search the person of an arrested accused immediately after the arrest and remove everything from his possession, except articles of wearing apparel, and shall give the prisoner a receipt for articles taken from his possession. A list of such articles shall be attached to the charge-sheet form. The person of a woman shall be scarched by another woman.

Identification of suspects.

Whenever it is necessary to submit a person suspected to have been concerned in any offence to indentification, the proceedings should be conducted whenever possible in the presence of a Magistrate, or Gazetted Police Officer or of a Sub-Registrar or, if no such officer is available, in the presence of two or more respectable persons not interested in the case who should be asked to satisfy themselves that the identification has been conducted under conditions precluding collusion.

The suspected persons should, if possible, be paraded along with 8 or 10 persons, or if there are more than one suspect, with as many as 20 or 30 persons, similarly dressed and of the same religion and social status. Care should be taken that the mixing up of the suspect or suspects with the other persons does not take place in view of the Police Officers and the witnesses. Each identifying witness should then be brought up singly in charge of the Magistrate's orderly or some other person, not being a Police Officer, to pick out the accused if he is able to do so. The identification by such witness should be conducted out of sight and hearing of other witnesses. If there is any fear that the identifying witnesses may be subjeced to threats or injury, should they become known to suspects or their friends, the witnesses should be allowed to view the persons paraded from a place where they themselves cannot be seen, as for instance through a window or an opening in a door or a wall. When the officer conducting the identification has satisfied himslf that no communication between the Police and the witnesses was possible, he should give a certificate to this effect. A statement in P. R. B. from No. 238 should be prepared. When suspects are presented for identification, and when the identification is not held in the presence of a Magistrate, the witness should be prepared to testify to the fairness of the manner in which the identification was effected in the proper columns. An officer not below the rank of an Inspector, and preferably a Gazetted-Officer, shall invariably attend every identification proceedings to see that they are properly conducted. The investigating officer, though his presence may be necessary outside, shall not be present while the identification is in progress. In a case of emergency however, when the attendance of an Inspector or a Gazetted Officer cannot be procured without an amount of delay which is undesirable under the circumstances of the case, the investi-

gating officer may remain present to watch the proceedings on behalf of the Police, but he shall make a note in the remarks column of the statement, giving clearly the reasons why such a course was necessary".—*Bengal Police Regulations, Vol. V. Rule 128.*

(G) Examination Of Accused.

The examination of an accused person is one of the most difficult tasks for an investigating officer who understands its value. In the first place the officer should maintain a calm demeanour and always keep himself within the bounds of law. Next, he should not view the accused with disgust or hatred. "He who sees in the accused a fallen brother or one wrongfully suspected will question well". It is indeed not very easy for the investigating officer to maintain this frame of mind while questioning an accused, as the latter may deny everything which has been satisfactorily established by evidence or may intentionally miss the material points in the questions and talk nonsense, but the investigating officer should never forget that he is doing his duty which enjoins him not to be carried away by excitement or passion. An officer who loses his balance of mind while questioning an accused delivers himself into his hands, and the latter is sure to take advantage of the situation and exasperate the questioner so as to throw him off his mark.

Before examining an accused person the investigating officer should study carefully the details of the case. The aim of the officer should always be to gain an ascendency over the accused, and this can only be done by confronting the latter with well-established facts which it is difficult for him to get over. When once such facts are properly and compactly arranged and the accused is given an impression that the investigating officer has known everything, he will find himself in an uncomfortable position and will be driven

to an admission of his guilt, but if the questions put to him betray any ignorance of details on the part of the investigating officer, he will take advantage of the gaps and clear himself out.

If the accused has a previous history of crime the investigating officer should carefully study it before questioning him about the matter in hand. A knowledge of the antecedents of the accused and his associates in crime would often help the investigating officer in getting hold of questions which, though not quite relevant to the matter in hand, may establish many things from which an accurate estimate of the accused's character can be formed. As a rule the accused would speak the truth in answering these questions, and if he does not do so one can have an idea as to his usual mode of lying and thereby pick out the lies in his statement concerning the matter in hand. If, however, he begins by giving correct replies to the questions regarding his antecedents, he may be led to give up his intention of lying and may tell the truth when the matter under enquiry is introduced in such a way as to appear to the accused that it follows of itself in the chronological order in which he is telling his story.

When an accused begins to make a statement the investigating officer should preserve an absolute calm. The least display of impatience or excitement will make the accused recoil. Experience shows that criminals in most cases do not make a bold and direct confession, specially when the offence is one against property. They would often attempt to make the crime appear less heinous than what it really is, and in doing so deny everything that can possibly be denied. Even when there is a complete avowal, the criminal would feel a repugnance in employing the correct expressions to denote his crime and matters connected with it. A dacoit would avoid the word "Dacoity" and substitute the word "work" (*kaj*) in

its place. The investigating officer should, in a case like this, adapt himself to the humour of the confessing man and show to him that he is ready to respect his so-called standard of honour. Nothing is gained by making the confession a painful task to the accused. The investigating officer should smooth his way and render the avowal as easy as possible. He should take everything with patience and advance slowly, step by step. In doing this there might arise stages where the investigating officer has to carefully handle the accused, e.g. when the accused arrives at a point where his conduct shows direct participation in the crime or when he has to implicate an accomplice.

Legal Value of the Statement of an Accused.

Any statement made by an accused person which suggests any inference as to any fact in issue or relevant fact is an "admission" and may be proved as evidence either against himself or on behalf of himself under some special circumstances mentioned in section 21 Evidence Act. An admission which inculpates the person making it is a confession. Under section 21 Evidence Act it may be proved against the person making it. The following confesssions cannot be proved aganist the accused who makes it :—

(i) If the making of the confession appears to the Court to have been caused by any inducement, threat or promise proceeding from a person in authority and sufficient to give the accused person reasonable grounds for supposing that by making it he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him. (Section 24 Evidence Act).

(ii) If the confession is made to a Police Officer, or

(iii) If the confession is made by a person whilst he is in the custody of a Poiice Officer, unless it may be made in the immediate presence of a Magistrate.

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. (Section 25, 26 and 27 Evidence Act).

If such a confession as is referred to in (i) is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant (Section 28 Evidence Act).

If such a confession is otherwise relevant, it does not become irrelevant, merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him. (Section 29 Evidence Act).

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession (Section 30 Evidence Act).

An admission made by an accused person to a Police Officer before arrest is admissible in evidence. (*7 C.L.R. 541*).

Every Magistrate not being a Police Officer may record any statement or confession made to him in the course of an investigation, or at any time afterwards before the commencement of the enquiry or trial. (Section 164 Cr. P. Code).

It is the duty of a Magistrate before recording a confession to carefully examine the accused person as well as to enquire

very carefully into all the circumstances under which the confession was taken and particularly as to the length of time during which the accused was in police custody (*Narayan*, 25 *Bom.* 543).

If an accused volunteers a confession, either before the investigating officer or before a Magistrate in the course of an investigation, it may be made use of as a valuable clue, and effort should be made to ascertain if there is evidence corroborative of any point in the confesssion which can be verified. The investigating officer should never aim at working with the object of obtaining a confession, his aim should rather be to obtain circumstantial and oral evidence so convincing that the accused may feel that he can not escape. If he succeeds in obtaining such evidence, the confes sion will often follow and will materially strengthen the case, but to seek to obtain the confession first and the corroborative evidence afterwards is to reverse the proper order of proceedings. A statement purporting to be a confession will often be made in order to mislead the enquiring officer, and such statements are very rarely true in all particulars, and also are frequently made in order to throw blame on other persons, or with a view to deter further enquiry." (*Bengal Police Regulations, Vol. V.*, *105*). (For method of verification of confessions see "Dacoity".)

Retracted Confessions :—

The mere fact that a confession has been subsequently retracted will not make it inadmissible against the accused, but it is unsafe in the majority of cases to found a conviction on retracted confessions which are not corroborated by independent evidence (*Emperor Vrs. Mahabir*, *18 Alla. 76*). "The mere retraction is not enough to make it *appear* that a confession has been illegally induced (*Basanta*, 25 *Bom.* 166). The credibility of such a confession is a matter to be decided by

the Court according to the circumstances of the case, and if the Court believes that such a confession is true, the Court is bound to act upon such belief as far as the person making it is concerned. (*Emperor Vrs. Maiku Lal*, 20 *Alla.* 103). A retracted confession, though admissible against the maker, should carry practically no weight against a person other than the maker tried jointly with him (*Nazim*, 5 *C.W.N.* 679). The confession of an accused person will not affect some other co-accused (tried jointly with him for the same offence) unless it implicates the confessing person substantially to the same extent as it implicates the person against whom it is used. Even if it so implicates the confessing man it can not stand higher than the testimony of an accomplice which ordinarily requires corroboration. Though such a confession may be taken into consideration against a fellow prisoner it must, as in the case of evidence of accomplices or approver, be corroborated (*Mohesh Biswas*, 19 *W.R. Cr.* 16), and the corroboration should particularly be in respect of that portion of it which connects the fellow prisoner with the crime.

(H) Police Custody,—Remand.

No Police Officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court (section 61 Cr. P. Code).

Whenever it appears that any investigation under this chapter (Chapter XIV Cr. P. Code) can not be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the Police Station shall

forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (if any) to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. A Magistrate authorising under this section detention in the custody of the Police shall record his reasons for so doing (Section 167, Cr. P. Code).

(This section does not apply to proceedings under Chapter VIII Cr. P. Code,—*Raghunandan, 8 C.W.N. 779*).

According to the provisions of the above two sections an accused person shall be sent forthwith to the nearest Magistrate together with a copy of the case diary, if the enquiry can not be completed within twenty-four hours of his arrest. In no case is a Police Officer justified in detaining a man longer than what under all the circumstances of the case is reasonable. At the expiration of the twenty-four hours, unless the special order of a Magistrate has been received, the prisoner must either be released or sent on to the Magistrate. Any further detention is absolutely illegal. Though the Code does not expressly lay down any thing in regard to the place or the time of confinement, it is perfectly clear that it was intended that where a Police Officer arrested any person the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police Station and placed in the custody of the officer

in charge of the Station. (*Reg. Vrs. Behary Singh, 7 W.R. Cr. 3*). If the Police Officer without himself arresting the accused directs some of the neighbours to take charge of him, the period of twenty-four hours will be calculated from the time when the charge of the accused was so taken by the neighbours.

An application for remand to Police custody during investigation should not be made unless it appears that the investigation can not be completed within twenty-four hours, and that there are reasonable grounds for believing that the charge is true and the presence of the accused is necessary to complete the investigation. When these conditions exist the Station Officer shall forward the accused to the nearest Magistrate (whether he has or has not jurisdiction to try the case) together with a copy of the Case diary, and report the matter to the Superintendent of Police. The grounds upon which the remand is needed shall be distinctly stated in the application to the Magistrate. The application shall be made personally by the chief police officer present to the chief magisterial officer present. Thus, at a head quarters station, the Superintendent of Police and at a sub-division, the Circle Inspector (if there be no Assistant or Deputy Superintendent), shall appear before the Magistrate of the District or the Sub-divisional Officer, as the case may be, to make the application, unless it is impossible, owing to the absence of one of the officers concerned, or some ather exceptional cause. (*Bengal Police Regulations, Vol V. Rule 153*).

(I) CASE DIARY.

Every Police-Officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed the inves-

tigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police diaries of a case under enquiry or trial in such Court, and may use such diaries not as evidence in the case, but to aid it in such enquiry or trial. Neither the accused nor his agent shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court, but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the Indian Evidence Act, section 161 or 145, as the case may be, shall apply. (Cr. P.C. section 172).

Section 161 Evidence Act.—Any writing referred to under the provisions of the two last preceding sections (as to refreshing memory) must be produced and shown to the adverse party if he requires it. Such person may, if he pleases, cross-examine the witness thereupon.

Section 145 Evidence Act.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved, but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

The special diary may be used by the Court to assist it in the enquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused, but entries in the special diary can not by themselves be taken as evidence of any date, fact or statement therein contained (*Emp. Vrs. Mannu, 19 All. 390*). What the Court should do with the Police diaries is to discover, out of them, any matter

of importance bearing upon the case, and then call for necessary evidence to have that matter legally proved. (*Syed Abdul Rahim Vrs. Salher Cherwar. 10 C.W.N. 600*). The accused has no right to insist that a Police diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the memory of a Police Officer under examination. The right is the right of the Court. (*Kali Charan Chunary, 10 C.L.R. 51*).

No witness other than the Police Officer who made the diary can use it for the purpose of refreshing his memory. (*Emp. Vrs. Mannu, 19 All. 390*). A case diary ought not to be referred to as corroborative evidence when the witness who made it did not use it to refresh his memory. (*15 Cr. L.J. 256*). A Sessions Judge can not rely on police proceedings or put the same to the Jury without examining police officers as witnesses so as to explain such proceedings (27 *Cal* 298).

The privilege given by this section does not extend to statements taken under section 161 and entered in a diary kept under this section. (20 *Cal.* 642). Such statements should not therefore be entered in the special diary, but should be separately recorded.

"In the case diary should be noted the particulars of the house searches made with the names of the witnesses in whose presence search was made, by whom, at what hour and in what place arrests were made, in what place property was found, and of what description, the facts ascertained, on what points further evidence is necessary, and what further steps are being taken to complete the investigation. The diary shall mention every clue obtained, even though at the time it seems unprofitable, and every step taken by the investigating officer, but it shall be as concise as possible. The statements of witnesses shall not be recorded in the diary but the names of all witnesses examined should be given. The diary shall be a record of

acts done by the officer and of the facts ascertained by him, i.e. of the result of his investigation."—*Bengal Police Regulations Vol. V. Rule 134.*

Case diaries shall be written up as the enquiry progresses, and not at the end of each day. The hour of each entry and the name of place at which written shall be given in the column on the extreme left. A note shall be made at the end of each diary of the place from, the hour at, and the means by which, it is despatched. The place where the investigating officer halts for the night shall also be mentioned.

If an officer who is supervising an enquiry into a case takes part in an investigation in the course of which any new or material fact comes to his notice, he shall, under section 172 Cr. P. Code, keep a case diary in accordance with the instruction given above. In cases in which supervising officers take no active part in the investigation, it will be sufficient for them to keep a personal diary in the form prescribed for Inspectors, in which they shall set forth the manner in which they supervise, any questions which they may have put to witnesses, any identification which took place in their presence, and any other material circumstances which may come to their notice and which will be useful to them in refreshing their memory.—*Bengal Police Regulations, Volume V, Rule 136.*

Subject to the power of the Magistrate and Judge, no one except the following persons shall be allowed to see the case diaries until the final disposal of the case by the Magistrate or Judge :—

(i) The investigating officer.

(ii) The officer in charge of the Police Station,

(iii) The Circle Inspector or police officers of higher rank.

(iv) The Court Officer (Subinspector or Inspector).

(v) Any person specially authorised by the above persons.

(vi) The clerk or Subinspector in the office of Superintendent of Police authorised to deal with case diaries.—*B. P. R. Vol. V, Rule 135.*

(J). Completion of Investigation.

Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a Police report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appears to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, (Section 173 Cr. P. Code).

If, upon an investigation under this chapter, it appears to the officer in charge of the Police Station that there is sufficient evidence or reasonable ground as aforesaid (ground of suspicion to justify the forwarding of the accused to a Magistrate), such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused, or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police Station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send

to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-Divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for enquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his :appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report. (Section 170 Cr. P. Code).

Reports made by a police officer in compliance with sections 157 and 168 are not public documents within the meaning of section 74 of the Indian Evidence Act, and consequently an accused is not entitled before trial to have copies of such report. The same rule applies to reports made by a police officer in compliance with section 173 (i.e. Charge-sheet or Final Report)—*Emperor vrs. Arumugam*, 20 *Mad. 189*. The Police report referred to in section 190 (1) (b) is the report made by the Police under section 173 Cr. P. Code. (*13 Cr. L. J.—752*). Where a Magistrate who might have, under section 190 (b), taken cognizance of the case on

a Police report did not do so, but proceeded to make over the case to a subordinate Magistrate for enquiry and report as though the matter he was dealing with was on a complaint under section 200, it was held that the proceedings of the deputed Magistrate so far as they bore on the case based on a Police report were not in consonance with the provisions of the law. (*17 C. W. N. 1004*).

Section 170 is the only section under which a police officer can take recognizance from an accused person for his appearance before a Magistrate. He can exercise this power only after the investigation is complete. This section gives the police officer authority to similarly bind the witnesses for the prosecution. (It is not however the duty of the police to bind over and produce before the Magistrate the witnesses for the defence). If the complainant or witness refuses to attend or to execute a bond, the officer in charge of the Police Station may forward him in custody to the Magistrate. (Section 171 Cr. P. Code).

As to the procedure on forfeiture of a bond, see section 514, 515, and 516 Criminal Procedure Code.

When a Magistrate having taken cognizance of a case refers it to the Police for enquiry and report, the Police have no power to prefer a Charge-sheet before another Magistrate and the latter has no jurisdiction to take cognizance of the case. (*16 Cr. L. J. 466 (m)*).

"As soon as possible after the carge has been substantiated, the charge-sheet shall be sent by the quickest means to the Court Officer for submission to the Magistrate. When a *prima facie* case is made out in a case in which articles have been sent for chemical analysis, the charge-sheet shall not be delayed till receipt of the Chemical Examiner's report. If a case in the first instance is reported in Final Report form, but subsequently by the Magistrate's order or otherwise, the

accused person is placed on his trial, the Final Report form shall be cancelled and a charge-sheet submitted. If, on transit from a police station to the Court, an accused person absconds, the Charge-sheet form shall stand.

"A police officer sending up an accused person for trial shall certify on the back of the Charge-sheet that he has caerfully examined the Register of Persons Convicted, and that he has in all other respects made full enquiry whether such accused person has been previously convicted. A similar certificate shall be given regarding absconders against whom a charge is proved. Should previous conviction be ascertained, a short report of all particulars concerning them, including the names of any person who can prove the previous conviction, will be sent with the Charge-sheet to enable the Court Officer to prove them under section 511 Cr. P. Code. In addition to the certificate referred to, the investigating officer, when the accused is charged with an offence for which enhanced punishment can be given on reconviction, shall note on the back of the Charge-sheet as to whether the accused has resided in his jurisdiction for a period of more or less than 10 years.

The antecedents of each accused person shall be noted on the back of the Charge-sheet under one or other of the following heads :—

1. Known thief, Dacoit, Robber, 2. Vagrant with no fixed residence. 3. Suspicious character. 4. Habitual drunkard. 5. Prostitute. 6. Good character. 7. Antecedents unknown.

If an accused is known to be a desperate character, the fact shall be separately reported, so that the Court Officer may bring it to the notice of the Magistrate and the Jailor.

Lists of property stolen, lists of property found on parties arrested, reports on previous convictions, the bail and recognizance bonds executed under section 170 Cr. P. Code, and a

map in cases of murder, highway robbery, extensive burglary or theft where Rs. 600 or more are stolen, serious riot, dacoity and mail robbery, shall be attached to the Charge-sheet form. The map shall, if possible, be drawn to a scale ; if not drawn to a scale, the fact shall be noted clearly on the map ; it should show all particulars likely to be of use to the Court, such as the place of occurrence, the surrounding rooms or houses of the witnesses, etc, etc, with their relative positions and distances ; the number of the case and the name of the accused shall be given at the top, and the signature of the draftsman shall be at the foot. Use should always be made of cadastral and other maps, where they are available and are of sufficiently large scale. The draftsman shall be produced as a witness at the trial and evid ence shall be elicited to show who pointed out to him the various places marked on the map.

In all cases in which no arrest is made (except as in Charge-sheet cases) or in which there is insufficient evidence to send up the persons arrested for trial, or in which the charge is reported false, the Final Report contemplated in section 173 Cr. P. Code should be submitted.

Bail bonds taken under section 169 Cr. P. Code shall be sent with the Final Report form.

Maliciously or Intentionally False Cases.

When an investigating officer is of opinion that a case is maliciously false, he shall not be content with the mere negative proof that the complainant has failed to prove his case, coupled perhaps with some inference based on circumnstantial evidence that the case is false. He shall proceed to collect positive evidence which will support a prosecution of the complainant under section 211 or 182, I. P. Code. He shall examine the witnesses and shall give in the case diary and Final

Report Form a complete list of the witnesses whose evidence will be needed to prove the case as false. He shall also record the reason for his opinion in the Final Report Form with special care and fulness." (*B. P. Regulations. Vol. V. Chapter IX*).

Where there is sufficient evidence for the prosecution of the complainant, the investigating officer should carefully consider the facts and circumstances of the case and decide if the prosecution should be under section 182 or 211 Penal Code. In a prosecution under section 182 I. P. C. it is necessary to prove.

1. That the complainant knew or belived the *information* (given to the Police) to be false.

2. By doing so, he intended or knew it to be likely that he would thereby cause the public servant (a) to do or omit anything which the public servant ought not to do or omit if the true state of things were known to him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person.

In a case under section 211 I. P.C. it is necessary to prove that :—

1. The person proceeded against instituted or caused to be instituted *any criminal proceeding* agianst a *defined* individual with intent to cause injury to such individual, or

Falsely charged any individual with having committed an offence.

2. He knew that there was no just or lawful ground for such proceeding or charge.

In a case under section 211 the prosecution should prove absence of just and lawful ground for making the charge, while in a case under section 182 proof of positive knowledge or belief of the falsity of the information should be given. If the information conveyed to the police amounts to the institution

of criminal proceedings against a *defined* person or amounts to the falsely charging a defined person with an offence, the person giving such information is guilty under section 211. Section 182 must be understood as referring to cases when the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code. (*Apaya Tatoba Munde*, *15 Bom*, *L. R. 574*) The Calcutta, Madras and Allahabad High Courts differ from the view of the Bomby High Court. The Calcutta High Court has held that an offence under section 211 includes an offence under section 182 and the Magistrate has therefore discretion to proceed under either section (*Bhoktiram vrs Heera Kolita*, *5 Cal*, *184*), but if the false charge is a serious one, the graver section 211 should be applied (*Sarada Prasad Chatterjee*, 32, *Cal*, 180.) Where a false charge is made to the Police of a cognizable offence, the offence committed by the person making the charge falls within the meaning of section 211 and not section 182 (*Giridhari Naik 5. C. W. N. 727*)

The investigating officer should therefore always aim at prosecuting the complainant under section 211 unless a charge under that section cannot stand on account of the want of one or more of the ingredients of the section as noted above.

A petition made by a person to the Police, falsely stating that the petitioner *suspects* another person of having comitted an offence and praying for unquiry, does not amount to an institution of criminal proceedings against that person within the meaning of section 211. The petitioner should be charged under section 182 with having given false information with intent to cause a public servant to use his lawful power to the injury of another person (*Gopal Bhekaji*, *Unrep. Cr. C.* 72.).

Supplementary Investigation.

When the Magistrate considers that the police have acted erroneously in not sending up an accused person for trial and that the evidence supports the charge, he shall either order a fresh enquiry or direct the case to be sent up in charge-sheet form for trial. He shall issue a formal warrant for the arrest of the accused, and shall not direct the investigating officer to make the arrest under section 54 Cr. P. Code. When a fresh enquiry is ordered by the Magistrate it shall be entered on and completed as soon as possible. If, on the completion of such enquiry the investigating officer considers the charge proved, he shall submit a Charge-sheet form, if not, he shall submit a Final Report in the usual way.

If, after sending in the Final Report of a case, a police officer obtains a clue and sufficient evidence to justify further proceedings, he shall immediately reopen the enquiry and submit a Charge-sheet form, should the evidence justify the accused being-sent up for trial. If any one is arrested, but not sent up, or if no one is arrested, he shall submit a Final Report in the usual way.

The Officer in charge of a Police Station is responsible for the result of any investigation made by an officer subordinate to him, and must decide how a case is to be sent up to the Magistrate. After a case has heen sent up in Charge-sheet or Final Report Form no superior officer may detain, cancel or alter it. But he may order further enquiry, pending the orders of the Magistrate.

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CHAPTER II.

THEFT.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, in said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without

Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c). A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d). A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e). Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z's return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession, and A has not committed theft, though he may have committed breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies : here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high road, not in the possession of any person : A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotton : Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller to be regulated.

Z, carries it to his shop. A, not owing the jewller any debt for which the jewller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft though the watch is his own property, in as much as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration : Here, A takes dishonestly. A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity form Z's wife ; she gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valua-

ble property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession : Here, as A does not take dishonestly, he does not commit theft.

379. Whoever cmmits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or or with both.

Procedure :—

Cognizable—Warrant—Not bailable—Not compoundable—Triable by any Magistrate—Triable summarily if the stolen property is not worth more than Rs. 50/-.

Comment.

The following ingredients are necessary to constitute the offence of theft :—

(1) An intention to take property.
(2) The intention must be dishonest.
(3) The subject matter of the theft should be moveable property.
(4) It should be taken out of the possession of any person.
(5) The taking should be without the consent of that person.
(6) The property should be moved in order to such taking.

1. **Intention.**—The intention of the accused will, as in

the generality of offences punishable under the Indian Penal Code, determine his criminal responsibility. There must be the intention to take property, and this intention must be in existence before the moving of the property is effected. If the taker had originally no such intention but acquired it after the removal of the property, he is not guilty of theft though he may be convicted of criminal misappropriation. The intention should be to take property, and it may not be to appropriate it permanently. In this respect intention should be distinguished from motive and it is the former which is to be taken into consideration.

2. **Dishonestly.**—Intending to take dishonestly, that is, with the intention of causing wrongful gain to one person or wrongful loss to another. "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled. "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. It follows therefore that "dishonesty" involves adoption of unlawful means by the offender for the acquisition of property to which he is not entitled, or for depriving one, either permanently or temporarily, of property to which he is legally entitled. This definition should, however, be taken with a certain amount of restriction so as to exclude cases in which the accused acts *bona fide*, as, for instance, in the case of a watchman who, finding poachers in his master's fisheries seized their nets and refused to deliver them either to the poachers or to the Police, without his employer's permission. Here the watchman was held not to be guilty of theft as he acted *bona fide* in the interest of his employer. (*Nabin Chander Halder, 6 W.R. 79, See Sheomeshur Rai, (1888) 8A. W.N. 97*). The intention to cause wrongful gain or loss must exist at the time when the property is moved, but it is not necessary that the intention should be to take the thing permanently or to appropriate the

thing taken. (*Vide Illustration* (*1*) ; (*See also Sri Churu Chungo* 22 *Cal.* 1017, *Nabi Baksh* 25 *Cal.* 416). Where, however, the owner is kept out of possession temporarily, not with any dishonest intention, but only with the object of causing him trouble or anxiety and with the ultimate object of returning the thing to him without taking any thing as recompense. the detention does not amount to wrongful loss. (*Nabi Baksh*, 25 *Cal.* 416).

Wrongful gain to the taker is not necessary as an essential element in every theft. It is not necessary to prove that the offender derived any profit from his crime or had an intention of deriving it. Where the accused took the complainant's three cows against her will and distributed them among her creditors he was found guilty of theft (*Madari Chowkidar*, (1865) 3 *W.R.* 2) ; similarly servants who clandestinely took their master's oats for the purpose of giving them to their master's horses and not with any intent to derive any profit for themselves were held guilty of larceny though they were not responsible for the condition of the animals. (*Privett*, 2 *C.* & *K.* 114). The Calcutta High Court has held that illegal seizure and impounding of cattle is not theft even if it is done maliciously with the intention of putting the owner to additional expense, inconvenience or annoyance, (*Aradhun Mundul Vrs. Meyan Khan* 24 *W.R.* 7). Where however the accused loosed the cattle from the complainant's cattle-shed and impounded them with the object of sharing with the pound-keeper the fees to be paid for their release, he was held to have committed theft. (*Paryag Rai Vrs. Arju Mian* 22 *Cal.* 139).

A creditor is guilty of theft when he takes property out of the possession of his debtor, without his consent, with the intention of enforcing payment of the debt ; (*Sri Churu Chungo*, 22 *Cal.* 1017). Where the accused unyoked the bullocks belonging to the complainant and took them away on the

ground that the complainant's brother owed him money and suggested permission of the complainant to the act, but adduced no evidence, it was held that the taking was dishonest even if the complainant offered no resistance (*Manu Sawmy Pillai*, 4 *Cr. L.R.* 19). A creditor is not however guilty of theft when he appropriates payment made by the debtor under a misapprehension towards a time-barred debt, (*Mussamat Piari Duliya*, 1 *A.L.J.R.* 508). A ticket checker of a Steamer Company, with the intention of compelling payment of fare, took possession of the umbrella of a passenger who travelled without a ticket. It was held that he was not guilty of theft as there was no intention on his part to cause wrongful gain to himself or wrongful loss to the camplainant who was bound to pay the fare, (*Matobbar Sheikh*, 14 *C.W.N.* 936).

To rebut an inference of dishonesty the defence usually taken is (1) that the property was taken by mistake, or (2) that the accused had a right to take it, or (3) that he did not intend to misappropriate it.

Mistake :—

The accused cannot be convicted of theft if there has been a *bona fide* mistake, e.g. when he takes an empty bottle believing it to be abandoned, or a dog believing it has no owner. Similarly, it is no offence when he believes, under a mistake of fact and in ignorance of law, that he has a right to take the property (*Nagappa*, 15 *Bom.* 344). If a thing is taken by mistake or received by mistake and is subsequently misappropriated, for instance when a man takes by mistake an umbrella, or a currency note for Rs. 50/- paid him in mistake for Rs. 10/-, and then misappropriates the same, the offence committed is criminal misappropriation and not theft.

Claim of Right :—

The removal of a thing in the assertion of a *bona-fide*

claim of right is not theft, (*Khetter Nath Dutt Vrs. Indro Jalia, 16 W. R. 68, Chaitan Charan Maity Vrs Kala Chand Samanta 10 C.* W. *N. 233n*). The dispute must be *bona-fide*, and not a mere colour of a right serving as a pretence to carry away the disputed property. (*Hari Bhuimali, 9 C. W. N. 974 ; Harish Chundra Das Vrs. Balai Audhicaree 16 W. R. 75, Madhab Hari, 15 Cal. 390n*). The question whether the property was carried away under a *bona-fide* claim of right or merely under colour of a right is a question of fact and not of law, and the Court will base its findings on the circumstances of each case, *Faruborough (1895), 2 Q. B., 484*). In the absence of any other grounds for preference criminal law views with favour the party who is in actual physical possession. Two Zemindars had a dispute regarding some plots of land situate on the boundary of their zemindaries. It was found that the complainant grew the crops which the accused cut, claiming the plots in an assertion of a *bona-fide* claim to the land. It was proved in this case that the complainant was in actual possession of the land and raised the crops. It was therefore held that there could be no *bona-fide* belief that the accused was entitled to the crops which the complainant had grown upon the land, so the act of the accused amounted to theft; (*Pandita Vrs. Rahimulla, 27 Cal. 501*). The case is however different when the accused can prove that he was as much in possession of the land as the complainant and had as much sown the land as the former. The complainant in a case was found to have raised the crops, but the accused was acquitted as he pleaded that they were raised by his uncle, and there was evidence to show that his belief was plausible ; (*Abdul Biswas Vrs. Khater Mandal, 4 C. W. N. 190*).

Intention to restore the property :—

The English Law is that it is not theft unless there is an

"intention to appropriate the chattel, and exercise an active dominion over it", but "if the thing is taken with the intention of totally depriving the owner of his property,the returning of the thing after a temporary use of it will not prevent the act from being a theft". In Indian Law however there are conflicting authorities on the subject. Where a murderer who was making his escape seized a boat and rowed away and then abandoned it he was held not guilty of theft (*Adu Shikdar Vrs. Queen-Emp. I. L. R. 11Cal.*). In *Reg. V. Nagappa*, (*15 Bom. 344*) it was held that where the other elements of theft were present the offence would be complete even if the taker's intention was a temporary retention. In a case in which the accused seized the complainant's boat to prevent him plying near his (accused's) ferry and did not intend to deprive the complainant permanently of the boat, it was held to be theft.

3. **Moveable Property** :— The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth". Explanations 1 and 2 state that things attached to the earth may become the subject of theft as soon as they are severed from the earth, and that the severance itself may complete the theft. It will not however be theft until the thing is actually severed from the earth. A sale of trees belonging to another is not theft if the trees are not cut down at the time of the sale (*Balos alias Hussain Sahib*, (*1862*) *1 Weir 419*). Any part of the earth whether it be stones or clay or sand or any other component when severed from the earth becomes moveable property and can therefore be the subject of theft (*Suri Venkatappayya Sastri Vrs. Madula Venkanna, 27 Mad. 531*). It is possible to sever earth from the earth and a moving effected by the same act which effects the severance may be theft, (*Emp. Vrs. Shivram, 15 Bom. 702*).

Salt naturally formed in a creek is not property until legally appropriated and it is not theft to remove it; (*R. V. Mansang, 10 Bom.*). But salt formed on the surface of a swamp appropriated by Government (*Tamma Ghantaya 4 Mad. 228*) or in a creek under the supervision of Government, or where guards are stationed to prevent its removal (*Queen Vrs. Jamma I. L. R. 4 Mad.*) is property within the meaning of this section.

The following articles may be the subjeet of theft :—

(1) Any valuable security (*Kashiraj Martand, Cr. R.* 1870) ; Halves of notes sent in a letter (*Edmund Mead.* 4 *C & P* 335).

(2) A house boat (*Mehar Dowalia* (1871) 16 *W.R.* 63).

(3) Gas (supplied by a Gas Company) drawn off from the main pipe without allowing it to pass through the meter, (*David White*, 6 *Cox* 216).

(4) Water supplied by a Water Company to a consumer and standing in his pipes (*Ferens V. O'Brien* 11 *Q.B.D.* 21).

(5) Water reduced to possession such as running water in irrigation channels (*Chockalingan Pillai, M. W. N.* 119), but not water diverted from a river into a channel made and maintained by a person (*Sheik Ariff*, 35 *Cal.* 437).

(6) A bull dedicated to an idol and allowed to be at large, if it appears that the owner did not relinquish his proprietas there-in (*Nalla*, 11 *Mad* 146). Whether the owner reserved any proprietory right in the animal is a question of fact which the Court has to determine. The mere fact that the animal was allowed to be at large should not signify its abandonment. If however no proprietory right is reserved, as in the case of a bull

liberated at a *Sradh* ceremony, it cannot be the subject of theft even if the former owner may continue to feed it *(Romesh Chunder Sanyal Vrs. Hiru Mandal* 17 *Cal.*852*)*.

(7) Fish when they are restrained in an enclosed tank or *bandh* from which they are unable to escape, *(Shaikh Adam*, 10 *Bom.* 193*)*. Fish in a public river or creek the right of fishing in which has been let out *(Bhagiram Dome Vrs. Abar Dome*, 15 *Cal.* 388*)*, or in a tank not enclosed on all sides *(Nayaram Sarma Vrs. Nichala Katani*, 15 *Cal*, 402*)*, or in an open irrigation tank *(Subba Readi V. Munshoor Ali Saheb*, 24 *Mad.* 81*)* are *ferae naturae* and are not therefore the subject of theft. Removal of fish from such water is an offence under the Fisheries Act. The test in each case is if the fish are at liberty to escape: if they are, then the offence is one under the Fisheries Act, if they are not, then the removal of them is theft. The state of things actually in existence at the time of the occurrence is to be taken into consideration. If the water in an open irrigation tank has dried up to such an extent that both the supply and distribution channels are dry and the fish cannot escape, the catching of such fish without the consent of Government is theft, *(Subbia Servai* 36 *Mad.* 172*)*.

(8) Wild animals, when killed upon the soil as they then become the absolute property of the owner of the soil.

(9) Wild animals, and birds when confined or tamed: such as tamed deer, hawks, pigeons,pheasants etc.

(10) Domestic animals even when they are let loose for

grazing or drinking water *(Karsan Bapu*, 4 *Bom, L.R.* 626*)*. It is not however theft to illegally seize cattle and take them to the pound, *(Jhaman Lal* 10 *C. W.N.* 228 *n)*.

A human body, either alive or dead, cannot be moveable property *(Ramadhin*, 25 *All.* 129*)*. In Engifsh law there is property in a carcass of a deceased animal, but the principle of the Indian Rule appears to be different. Where the owner buried the carcass of a bullock suspecting it to have been poisoned it was held that he abandoned his property there-in and so there could be no theft if another person dug it up and carried it away for the sake of its hide, *(4 M.H.C. App.* 30*)*.

4. **Out of possession of any person.**—"A moveable thing is said to be in the possession of a person when he is so situated in respect of it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need".—*Stephen.* Section 27 of the Penal Code lays down that when property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession. Similarly possession by an agent is possession by the principal. The possession of a lessee is his own possession for the period of the lease as also for the purpose of the lease, but beyond this the owner of the property is the possessor". The following persons are owners of a thing in respect to larceny,—the person having a lien, a trustee, a mortgagee, or pledgee, the person to whom it has been hypothecated, the officer who has seized goods, parents and guardians in respect to things in possession of the child, the person who has given materials to a maker to be made up, the maker of those materials, the servant who keeps the things for his master, the person who is entrusted with a thing and who is responsible for it, and the vender and vendee of ascertained

goods so long as they remain with the vendor. The property in wrecks and estrays remains in the general owner, and others may by salvage or by finding have a special property, but the taking of derelict property with intent to steal is not larceny.—*Hamilton.*

In order to be the subject of theft the property must be in the possession of the prosecutor, and there must have existed the possibility of continuous possession. There can be no such possession over wild animals, birds or fish so long as they are at large and hence they are not the subject of theft. They become however capable of being stolen when they are tamed or restricted in a place where they can be taken at pleasure, or are too young to escape or are dead *(Reg Vrs. Shaik Adam 10 Bom. 193, Mayaram Surma V. Nichala Katani, 15 Cal. 402).* Where property removed belonged to a man who was dead, or where it has no apparent possessor, as in the case of lost property, the dishonest removal is not theft but criminal misappropriation, (Vide ill (g)). The case is different where the owner loses or mislays property in his own house, and the man who finds it there commits theft if he appropriates it dishonestly. The same principle applies to cases where the owner transfers possession of the property through mistake, e. g. where a man sends a coat to a washerman in the pocket of which he has left money through mistake. If the washerman takes the money he commits theft even if the owner was not aware of the contents of the pocket. If however the owner had sold the coat in ignorance of the contents of its pocket his possession over them would be lost though his property would remain, and the purchaser would commit criminal misappropriation and not theft if he takes the money.

Attached property :—

The owner of attached property may commit theft

in respect of it if he removes it dishonestly (*Chunnu 8 A. L. J. R. 565*). This principle holds good where the attachment is by distraint ; if it is by a Civil Court, as in the case of attachment of a judgment-debtor's property, the dishonest removal of the same is not theft but an offence under sections 424, 403 I. P. C. (*Obayya, 22 Mad 151*). If there is no dishonest intention, as where attached crops are removed in order to save them from being washed away, it is no offence. (*Pedda Maddulegadu, 1 Weir 423*).

Joint property :—

When there are several joint owners exercising joint possession over a property, dishonest removal of it by one of the owners is theft (*Ponnurangan, 10 Mad. 186.*) If there is no actual joint possession the removal is not theft, as in the case of removal of the whole crop by a ryat holding on a *Varam* tenure without giving the Zemindar his share of the crop *(Subudhi Rautho V. Balaram Pudi,* 25 26 *Mad 481).* Where the land-lord had jointly cultivated land with a non-occupancy ryot and removed the crops without the latter's consent, it was held that he was not guilty of theft as he was part owner and in possession *(Phut Singh 10 A. L. J. R. 174).* Where corporeal property belongs to a corporation and the corporation has such power over it that it can exclude others from it, the agent or trustee of the corporation is deemed to be in possession of the property.

"*Possession*" should be distinguished from "*Custody*". The person in possession is one who has such power over the property that he can exclude others from it and may, if necessary, exercise that power on behalf of himself or of some person of whom he is guardian or for whom he is trustee. A person in custody has no doubt a sort of physical control over the property, but he is obedient to the orders of the former in

respect of exercising that control. The property still remains in the possession of the owner though it is in the physical custody of the latter, and he can take it back whenever he pleases. This sort of custody is contemplated in section 27 of the Code which expressly provides that property in the possession of a person's wife, clerk or servant is in that person's possession. The actual possession continues where the delivery is not intended to part with the possession e.g. goods taken by a purchaser when the shop-keeper did not intend that he should take them without payment, goods taken home by a purchaser for selection, or taken without performance of the condition on which the owner intended to part with the possession, as for instance taking delivery of articles from a cart without payment of price when they had been loaded in the cart on the express condition that the price would be paid before unloading (*Samuel Pratt, 1 Mood, 250*). When a lady handed her money to a stranger in a railway station requesting him to get a ticket for her as he was nearer the ticket office than herself, and the man ran away with the money, it was held that he was guilty of theft (*Reg V. Thompson 32 L. J. M. C. 53.*) If, in a case like this, the accused induces the complainant by a false pretence to part with the physical custody of the property, he is guilty of cheating; but the subsequent appropriation of the property will be theft.

Any person :—

The word "person" includes any Company or Association, or body of persons, whether incorporated or not. This word is sufficiently wide to include such representative bodies as the Government. Possession of Government property by a servant of Government, e. g. possession of wood by a Forest Officer, is held to be possession of Government itself, and a dishonest removal of it from his possession without payment of the necessary fees, although it is with his

actual consent, is theft if the consent was unauthorized or fraudulent (*Hanmanta, 1 Bom. 610*).

In order to constitute theft it is not necessary that the person from whose possession the property is removed should be the owner of it, or that his possession should be rightful. Every person who has the physical control over the property, no matter in whatever way he obtained it, must be deemed to be the "special owner" thereof as against any person who cannot show a better title. To constitute theft it is sufficient if the property is removed from the custody of a person who has an apparent title or even colour of right to such property. (*Gangaram Santram, 9 Bom. 135*). In this case A's wife gave his tools to B in payment of a debt and A brought them back from B's house ; *held* that B had an apparent title against which the person aggrieved should not have taken the law into his own hands.

5. Without Consent :—In order to constitute an offence under this section it is necessary that the property should be taken without the consent of the person in possession of it. This consent may be express or implied and may be given either by the person in possession or by any person having for that purpose authority either express or implied (*Vide* Explanation 5 and illustrations (m) and (n)). A consent given under improper circumstances or an invalid consent will not justify the taking of the property. According to section 90 of the Code an invalid consent is one given by a person under fear of injury (physical injury to himself or to any other person), or under a misconception of fact, or by a person of unsound mind, or a person under twelve years of age.

The first question for consideration is whether the taking was without the will or free approbation of the owner. Where

a debtor gave certain property to his creditor, and subsequently found out that the debt was time-barred, it was held that the creditor could not be guilty of theft in as much as there was a full unqualified consent given by the debtor at the time of delivery of the property (*Musammat Piari Dulaiya, 1 A.L.J.R. 508*). Where A proposed to B to steal property belonging to B's master, and B, with the knowledge and consent of his master, entered into the plot to secure A's conviction, it was held that as the property was removed with the consent of the owner, A was not guilty of theft but he would be guilty of abetment of theft as he instigated B to commit theft (*Emperor Vrs. Troyluckho Nath Chowdhury, 4 Cal. 366*). This case is opposed to the English rule on the subject according to which the removal of property against the will of the owner is theft although the owner permits the property to be taken or affords facilities to the taking of it with a view to bring the party engaged in a felonious design to justice. It will not however be a taking against his will if he himself causes or induces the party to remove the thing.

There may be circumstances under which the owner of the property is so taken by surprise that he cannot either give or refuse his consent ; in such a case the taking should be held to be without consent.

Consent by person other than owner :—

Unauthorized consent will not justify the dishonest or fraudulent removal of a thing, vide the case of *Hanmanta*, (*1 Bom. 610*) in which a Forest Inspector in Government employ dishonestly allowed a contractor to remove a larger quantity of wood than he was entitled to remove. The question of consent presents some difficulty when it is given by a person other than the owner, for in such case it has to be seen if the person, though in possession of the property, was

within his authority when he gave the consent. In each case it is a question of fact. It should first be considered if the person in possession,—*e.g.* a servant or an agent,—had authority, express or implied, to part with the property ; next, it has to be seen if the person having authority to consent has used it to defraud the owner. The consent of the servant or agent carries with it the presumption of consent by the master or principal under the same circumstances, or in other words the consent given by the servant or agent may be urged as a good plea by the accused when that consent implied the consent of the owner.

Husband and Wife :—

The principle of English Law differs from that of the Indian Law on the subject. According to English Law husband and wife cannot be convicted of stealing from each other,nor can any one (a third person) be convicted of receiving from either husband and wife property stolen by one from the other, because where there is no theft there can be no receiving of stolen property (*Reg V. Kenny*, 2 *Q. B. D.* 307). Nor can a third person be said to steal the goods of the husband when they are delivered to him by the wife and he converts them to his own use. But if the person to whom the goods are delivered by the wife be an adulterer, he may be convicted of theft, and the case is similar even when the adultery has not been committed but is intended and the wife removes the goods of the husband with the assistance of the intended adulterer while leaving her husband for adulterous purpose. If however there is no adulterous purpose, one cannot be convicted of larceny if he assists the wife in removing her husband's property even if her intention is to wrongfully deprive her husband of his goods and she is about to leave him (*Reg V. Avery*, *Bell*, 150). This prtnciple has however been departed from to some extent in the Married

Women's Property Act according to which a husband or wife may commit theft in respect of the separate property of either, provided the removal of the property is effected by one while leaving or deserting, or about to leave or desert, the other.

According to Indian Law, Hindu or Mahomedan, either party to a marriage does not acquire any right to the separate property of the other. A Hindu or Mahomedan wife should be convicted of theft if she dishonestly removes property belonging to her husband (*Butchi, 17 Mad. 401*; *Khatabi 6 B.H.C.* (*Cr. C.*) *9*). The same principle holds good in the case of a Mahomedan husband, but not always in the case of a Hindu husband. A Hindu husband can not be convicted of robbing his wife, the wife being completely under the control of the husband. He is guilty if he removes the wife's absolute property i.e. *Stridhan.* There is nothing in Hindu Law to support the proposition that everything acquired by a Hindu wife during the married period is the property of the husband (*Ramasami Padeiyatchi V. Virasami Padeiyatchi, 3 M.H.C. 272*). A Hindu wife who removes her own *Stridhan* from the possession of her husband without his consent is not guilty of theft (*Natha Kalyan, 8 B.H.C.* (*Cr. C.*) *11*).

6. Moving the Property:—Another necessary ingredient of the offence is moving the property. The offence is complete when the least removal of the thing from its original place is effected; it is not necessary to remove it out of the owner's reach. A guest, who, with intent to steal the sheets of his bed, removed them into another room but was apprehended before he could leave the house with them, was held guilty of theft. Similar is the case in which the accused extracts the contents of a box with intent to steal them, but is surprised while he is doing so. If the property intended to be stolen is secured to another thing, the

dishonest moving of it is theft even if it can not be detatched from the thing to which it is fastened (*Nga Po Hle, S.J.L.B. 399*). The offence will be complete when the thief removes the property even an inch from the place where it was, though he may then leave it alone. But the moving must be of the property intended to be stolen ; if other property is moved in order to reach it, it will not be theft. Where the accused had cut open a package containing linen sheets which he intended to steal but which he did not touch or move, it was held that he was not guilty of larceny (*Cherry's Case, 2 East, P.C. 556*). The moving by the same act which effects the severance may constitute theft. Severance of growing grass from the earth amounts to theft (*Samsuddin, 2 Bom. L.R. 752*). So is pulling of wool from the bodies of live sheep (*Robert Martin, 1 Leach 171*).

The fact of moving must be connected with dishonest intention. The accused being in the employ of Government in the Post Office Deparment, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery peon and sharing with him certain moneys payable upon them. It was held that he was guilty of theft and of attempt to commit criminal misappropriation of property (*Reg. V. Venkatasami, 14 Mad. 229*). In the case of a Post Office letter-carrier, the taking of a letter out of the bag in which letters were carried for delivery and keeping it in his own pocket with intention to appropriate it was held sufficient to constitute theft (*Reg. V. Poynton L & C. 247*).

In order to complete the offence of theft the moving must be some thing more than a mere touch, although the touch may indicate an attempt. There may be moving without a touch, as when a piece of iron is moved by a magnet or a dog by a bait (Vide explanations 3, and 4).

Abetment.—A person abets the doing of a thing who *First*—Instigates any person to do that thing ;

Secondly—Engages with one or more other persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

Thirdly—Intentionally aids, by any act or illegal ommission, the doing of that thing.

Explanatian 1.—A person who by wilful mis-representation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. (S. 107 I.P.C.).

Abettor.—A person abets an offence who abets either the commission of an offence or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Explanation 3.—It is not necessary that the person abetted

should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge. (Section 108 I.P.C.).

The offence of abetment by instigation is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not, or whether, having consented, he commits the crime or not (*Tha La Aung, 12 Burma L. R. 70*). Instigating a person to commit a theft is an offence, although that person does not commit the theft and in fact informs his master of the fact (*Emp. V. Troylakhonath, 4 Cal*). Harbouring a thief in one's house, or supplying him with food before the commission of the theft is not in itself an abetment of the theft, but it is abetment if the same is done in order to facilitate the commission of the theft i.e. if the shelter is given with the intention of affording the thief an opportunity to conceal himself while waiting for the commission of the theft or the food is supplied in order that he might go on a journey to the scene of the intended theft (See *Lingam Ramanna, 2 Mad. 137*). Mere presence at the scene of the crime and knowledge that the offence is going to be committed is not abetment unless the person thus present holds such a position or influence that his countenancing what takes place may, under the circumstances, be taken as direct encouragement, or unless he is bound, by virtue of his office, to prevent the offence and he does not prevent it. Where theft was committed by some members of an unlawful assembly but it was found that a particular member of that assembly did neither remove any property personally nor aid any one in the commission of the theft, it was held that he could not be guilty of abetment of theft (i. e. Sec. 379 read with 114) though he could be guilty under Sec. 379 read with 149 I. P. C. (*Hansa Pathak V. Bansi Lal Das, 8 C. W. N.*

519). Where however the offence is committed under the express order of a person it amounts to abetment (*Tarinee Prosad Banerjee 18 W. R. 8*). In this case some buffaloes belonging to the complainant were taken away by order of the accused and retained in the custody of the latter's servant.

Legal Presumption from Possession :—The Indian Evidence Act lays down that a man who is in possession of stolen goods soon after the theft may be presumed to be either the thief or the receiver of the goods knowing them to be stolen, unless he can account for his possession (Sec. 114 Evidence Act, ill (a)). In a case like this dishonesty is inferred from the fact of recent possession and need not be proved by evidence. Such a presumption does not arise where the possession of the accused is defended on a claim of right; the theft by the accused, in that case, should be proved by evidence and can not be assumed.

In order to raise a presumption of guilty knowledge from possession the prosecution should establish the following points :—

(1) that there was a previous theft.
(2) that the property found in the possession of the accused is the same as that stolen ;
(3) that the theft was recent.

Previous theft :—It is not necessary to establish that the actual removal of the thing was seen by any particular witness. It will be enough if it is proved that the property was missing under such circumstances as would make it highly probable that it was stolen. The evidence of the person in possession or any other person on his behalf who is cognizant of the fact should, where possible, be corroborated by that of his neighbours to whom the occurrence was reported soon after it had taken place as well as by the production of a report

made to the Police or of a complaint lodged before the Magistrate. The accused may, of course, prove that there was no theft at all.

Identification:—No presumption against the accused will arise if it is proved that the property found in his possession was very much like the one stolen *(Bava Chela, B. Unrep. Cr. C. 227)*; there must be clear proof that the property was exactly the one stolen. If the property is not capable of being clearly identified (such as grain), unexplained possession of the same will not amount to proof of theft *(Qoyappan, 1 Weir 429)*. It is expected that the witness who identifies an article should give convincing reasons for his doing so. If he had given any description of the article to the Police, the Police report should be produced in support of his statement; if he had given no such description, the identification of the article by some little peculiarity or mark in it is always looked upon with suspicion, as the ordinary Indian witness has neither the capacity for so keen an observation nor such a retentive memory as may be safely relied on regarding points like this *(See Poromeshur Aheer 23 W. R. 16)*.

Possession must be recent:—There can be no presumption of guilty knowledge unless the accused's possession is recent, or in other words the theft is recent. The question whether the possession is recent enough to warrant a conviction for theft is a question of fact *(Guzzala Hanuman, 26 Mad. 467)*, and it should be considered with reference to the nature of the article stolen and the facility with which articles of that character pass hands. Where the accused was found in possession of a stolen buffalo twelve months after the theft, it was held that it was not such a recent possession as would raise any presumption in the absence of any satisfactory explanation given by the accused for the possession *(Nga Yauk, S. J. L. B. 366)*. Even in a case of recent possession the

presumption may be that the accused did not steal the thing himself but received it dishonestly. "If no other person is involved in the transaction, and the whole of the case against the prisoner is that he was found in possession of the stolen property, the evidence would no doubt point to a case of stealing rather than a case of receiving, but in every case, except in deed where the possession is so recent that it is impossible for any one else to have committed the theft, it becomes a mere question for the Jury whether the person found in possession of the stolen property stole it himself or received it from some one else. If there is no other evidence, the Jury will probably consider with reason that the prisoner stole the property, but if there is other evidence, which is consistent either with his having stolen the property or with his having received it from some one else, it will be for the Jury to say which appears to them the more probable solution (*Pollock.—Langmead, L. C., 427*). Where a number of articles, each of which is common and is ordinarily found with people, are found with the accused in a group and the prosecutor can prove that they were lost in the same concatenation, there may be a fair presumption of dishonest possession. The case is similar where the *same mixture* of paddy or such other article is found with the accused as was lost by the complainant.

Where mere recent possession is relied on it can not raise any presumption against the accused unless (i) the possession is clearly traced to the accused (*Mulhari, 6 Bom. 731*); (ii) the possession is exclusive (*Nga Tha Dwe, P. J. L. B. 279*). If the property is found in a house occupied by several inmates, some or all of whom are capable of committing the crime, there can be no presumption unless the possession is traced exclusively to some one of them. On suspicion of theft of certain articles from a running goods train, a van of the train in which four Railway coolies were travelling was searched,

and ten pieces of cloth which had been abstracted from the next van were found hidden under a heap of clothing belonging to the four coolies. It was held that none of them could be convicted of the theft of the cloth as there was no evidence to establish exclusive possession by one or more of them (*Ali Husain, 23 All. 306*).

Procedure :—A case of theft should not be tried summarily if there are complicated issues involved in it.

Joint trial :—A and B are both charged with theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge charging both with one theft, and B alone with the other two thefts (*Sec. 239 Cr. P. Code, ill.* (*c*)). A thief and a receiver of stolen property can not be tried together (*Wassanji Dayal, 6, Bom. L. R. 725* ; *Natha Lal Bapuji, 4 Bom. L. R. 433*).

Joinder of charges :—Removal by one single act of several articles, either belonging to the same or different persons, constitutes only one offence of theft (*Shaikh Mooneea, II W. R. 38, Krishna Sahaji, B. U. C., 927*). A charge of theft can not be joined to a charge of concealing stolen property under section 414 (*Wassanji Dayal, 6 Bom. L. R. 725*), as they are distinct offences within the meaning of sec. 233 Cr. P. Code. When offences under sec. 457 and 380 are committed in one transaction, it is desirable that formal convictions under both sections be recorded, so that if the accused subsequently commits another theft, technical difficulties may not arise (*Nga Pan Bee, 2 Bur. L. T. 19*). One person can not, at the same time, be convicted for abetment of theft as well as for receiving the stolen property (*Sita Ram Rai, 3 All. 181*). A person accused of theft may be convicted of criminal misappropriation, criminal breach of trust, or cheating, and *vice versa* (Cr. P. Code, sec. 236, 237).

Discovery of stolen property by accepting reward:—Section 215 I. P. C. lays down that a person is guilty under that section who, having taken or agreed to take any gratification on account of helping any person to recover stolen property, fails to use all means in his power to cause the offender to be apprehended and convicted. If a person removes any property with the object of restoring it on securing a reward he is guilty of theft as well as nnder section 215. If he actually restores the property, it does not minimize the guilt, but it may be taken into consideration in awarding punishment, and ordinarily the aggregate punishment should not exceed what could be inflicted for the theft alone (*Moideen Bawa P. J. L. B. 22*). Where a person points out the stolen property on receipt of a gratification he may be properly convicted of theft upon that evidence unless there is proof that somebody else has committed the theft. If, however, after taking the gratification or agreeing to take it, he fails to point out the stolen property, he may be convicted under section 215 I. P. C. (*Nga Ok Gyi, S. J. L. B., 449*).

Disposal of stolen property.—Under section 517 Cr. P. Code the Court holding the enquiry or trial may make such order as it thinks fit regarding the stolen property. The word "property" includes not only such property as has been originally in the possession of any party and in respect of which the offence has been committed, but also any property into or for which the same may have been converted or exchanged, and any thing acquired by such conversion or exchange, whether immediately or otherwise. On a conviction for theft the property should be restored to the person from whose possession it was stolen. It can not be given to the *bona fide* purchaser as his title to the stolen property, having been acquired through the thief, can not hold good as against that of the *bona fide* loser. The honest purchaser may, how-

ever, be compensated for the price paid from any money that is found in the possession of the accused. (Sec. 519 Cr. P. Code). This rule does not strictly apply in the case of negotiable instruments or bank notes. When an instrument, such as a promissory note, has been stolen, the person from whom it was stolen has a good title to it, not only as against the thief, but also any person who subsequently becomes the holder, unless such person can prove that the instrument had become negotiable at the time it was stolen, and that he had obtained it *bona fide* for value without notice of theft (*Bank of Bengal V. Mendes, 5 Cal, 654*). A currency note being in legal view money, the property in it passes by mere delivery, and in the interest of commerce and the security of human dealing nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule (*Collector of Salem, 7 M. H. C. R. 233*).

The property restored must have been in existence at the time of the theft. A's cow, having been stolen, was purchased by B in good faith six months after the theft. While the cow was in B's possession she had a calf. The thief was convicted after a year and a half and the Magistrate ordered both the cow and the calf to be restored to A. It was held that the delivery of the calf to A was illegal as it had not even an embryonic existence at the time of the theft (*Vernede I. L. R. 10 Mad. 25*).

When the accused is acquitted, the property should be restored to the person in whose possession it was found (*Ratanlal, I. L. R. 17 Bom. 748*). If the property had been seized by the Police as suspicious property, the Magistrate may order its restoration to the owner, if any one can satisfactorily establish his ownership, or to the person from whose possession it was seized by the Police (*Sec. 523 Cr. P. Code.*) The order passed by a Criminal Court regarding disposal of property is

a summary order, and the person who is aggrieved by the order may question the legality thereof by a regular suit (*Tribhoban, I. L. R. 9 Bom. 131*).

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope :—The object of this section is to give greater security to property deposited in a house, tent or vessel, so that the property is under the protection of that house, tent or vessel. If the theft is from a person while he is in a dwelling house, it will be an offence under section 379 (*Tandi Ram, P.R. no. 14 of 1376*). But see *Kashinath Bhanshet*, (*B.U.C., 56*) in which the accused was convicted under section 380 when he carried away property from a house inspite of the owner's remonstrances.

A person may be convicted under section 380 if he commits theft in his own house. The case is the same where the theft is committed by a person who has lawful access to the building (*Nga Pan E,, S.J.L.B. 367*). Theft of property by a Constable from the house which he was employed to guard was held to be an offence under this section and not a criminal breach of trust (*Boidnath Singh, 3 W.R.* 29). Where a prostitute stole the watch of a man who, while sleeping in her house, had left the watch on a table in the house, it was held that she was guilty of committing theft in a dwelling house (*Agnes Hamiltou, 8 C. & P. 49*).

Building :—"Building" means a structure of a permanent nature and does not include the open compound containing the structure or an adjoining garden. (*Rama, Unrep. Cr. C. 484*). The enclosed courtyard attached to the structure is a building within the meaning of this section. Theft from a verandah was held not to be a theft *in* a building (*Ghulam Jalani, P. R. No. 16, 1889*). It was observed in this case that "an ordinary verandha is no doubt part of a building, but a theft from the verandah which is *out side* the house is not a theft in a building. It might so happen that the verandah was so enclosed as to be a substantive building used for the custody of property, but that would be a question of fact to be determined upon the evidence in each case." It has however been held in a Punjab case that theft form a verandah forming part of a building which is itself used as a human dwelling or for the custody of property is theft in a building (*1 Weir, 435*). An entrance half surrounded by a wall in which there were two doorways but without doors, which was used for the custody of property,was held to be a building (*Dad, P. R. No. 10 of 1879*). Theft from the roof of a house is not theft in a building. Where the theft was of a *dhoti* which the prosecutor had spread out on the top of a house to dry and the accused got access to it by scaling the wall and stole the dhoti, it was held that there was no entry into the house, and consequently there could neither be house-breaking nor theft in a building and that the fact that the roof was used for various domestic purposes made no difference (*1 Weir, 435*). A cattle-shed walled on four sides is a building used for the custody of property, viz. cattle, and it made no difference if one of the walls had fallen down and was replaced by a structure of brambles (*Dullee, 6 N. W. P. H. C. R. 307*). But a cattle fold or pen enclosed by a thorn hedge is not a building (*Sucha Singh P. R. no. 57*). A brakevan (*1 Weir, 436*). or a railway

carriage is not a building. But where the accused committed theft in a railway carriage which was standing at a railway station it was held that he was rightly convicted under section 380, for "though the railway carriage was not a building, the railway station was (*Sheikh Saheb, B. U. C. 293*).

Tent.—Ordinarily a tent is enclosed on all sides by cloth walls, but even where one side is open, as in the case of a *Pal*, it is a tent within the meaning of this section. "The term includes cloth sheds in which shop-keepers in bazars and fairs expose their goods."

Vessel :—Anything made for the conveyance of human being or property by water.

Procedure.—Cognizable, Warrant, Not bailable, Not compoundable, Triable by any Magistrate, Triable summarily if property is not worth more than Rs. 50/-.

The offences under sections 380 and 457 not being distinct offences a conviction under both these sections does not enhance the trying Magistrate's ordinary jurisdiction according to the provision of para 2 and proviso (b) of section 35 Cr. P. Code (*Dhondi Bapu Bhapkar, 8 Bom.*).

For the first offence the sentence of whipping may be substituted, and on a second or subsequent conviction whipping may be inflicted in addition.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—This section applies when the property is in the possession of the master ; if the servant is exclusively in possession section 408 will be applicable

Clerk or Servant.—A clerk or servant is a person bound either by an express contract of service or by conduct implying such a contract to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact. "The only question to be determined is whether the accused was bound to obey the order of the employer so as to be under his control. If this element is present, a man is a clerk or servant although he gets no pay from the employer (as in the case of unpaid apprentices), or is remunerated by commission or share in the profits of a business or as a member of any co-partnership, or is employed occasionally or on the particular occasion on which he commits the offence. It makes no difference if the clerk or servant is appointed or elected to the appointment by a person other than the master whose orders he is bound to obey. The term includes a person employed by different persons at the same time for different purposes (*William Batty 2 Mood 370*) as well as a person who acted as a clerk or servant though not expressly appointed as such (*Foulkes, L.R, 2 C.C.R. 150*). But an agent or other person who agrees to transact business for another without undertaking to obey his orders is not necessarily a servant though he receives salary or other remuneration. So persons whose employment is in the nature of a contract, such as the driver of a hackney carriage or a hired boatman (*Bawool Manjee 8 W. R.* 32). But persons, such as mill-hands and colliers, do not cease to be servants merely because they are paid wages on the outturn of their work (*Thomas, 6 Cox 403*). The case of a commercial traveller is however different and the question in his case should be determined by the terms of his employment. He is undoubt-

edly a servant if he devotes his whole time to the employer's service (*Bailey, 12 Cox*, 56) ; at least this will be very strong evidence of his being under such control as exists between a master and a servant. Similarly, payment of remuneration will be another criterion of the relationship of master and servant. A solicitor who was given a fixed sum annually as remuneration for collecting rents of a limited Company was held to be a clerk or servant. The case is the same in respect of a manager, secretary or a director who gets remuneration from a Company or organization. A treasurer of a friendly society who received no remuneration was held not to be a servant (*Tyree, L.R. 1 C. C. R. 177*), as also a person employed to receive voluntary contributions for which he was not remunerated (*Nettleton, 1 Mood. C. C. 259*). Persons who work as members of an organization in which they are interested are not servants unless they are expressly employed as servants (*Hall, 1 Mood C.C.* 259). In India people enter into cultivating partnerships with men who work as labourers and are paid a share of the produce as their wages. They are servants for the purposes of this section. When the employment has been actually in existence, it makes no difference if there was any legal defect in the contract of the service. It is however necessary that the objects of the service should not be criminal (*Stainer, 39 L.J.M.C. 54*).

The theft must have been committed by the accused in his capacity as clerk or servant, and the relationship of master and servant should be in existence at the time of the theft. An ex-servant is not liable under this section unless it is established that the theft was committed by him during his service. Next, the section does not apply where a servant steals property, not of his master, but of a third person. A party of Policemen were convicted under this section where they stole a sum of money shut up in a box kept in the Government Treasury which these Policemen were guarding (*Juggarnath Singh 2*

W. R. 55), but in a similar case the Court convicted the accused under section 380 where they (Constables) were employed to guard a private house (*R. V. Boidnath Singh, 3 W. R. 29*). A servant would however be convicted under section 381 if he steals property belonging to a person for whom he was working at the master's instance, e.g. where the owner of the property is the guest of the master. The case is similar where servants rob boarders in a hotel or waiters rob passengers on steamers, for they are for the time being the servants of the boarders or passengers upon whom it is their duty to attend.

Procedure.—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate, or Magistrate of the first or second class,—Triable summarily if property is not worth more than Rs. 50/-. Whipping may be inflicted in lieu of imprisonment or fine for a first offence and in addition to imprisonment or fine for a second or subsequent offence.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a) A commits theft of property in Z's possession, and, while committing this theft, he has a loaded pistol under his

garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restraint Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Principle.—This section will not apply if hurt is actually caused when a theft is committed. It will then be an offence punishable as robbery. But if hurt is caused, not for the purpose of committing the theft or carrying off the stolen property,—as where the offender, while carrying away a bag of rice from a house dropped the rice and stabbed the man who seized him,—it will be an offence under this section and section 324—and not robbery (*Nga Paing*, *4 L. B. R. 147*). The possession of a knife or other weapon by the thief at the time of committing the theft is not of itself sufficient evidence for a conviction under this section unless it appears that the possession was a preparation to cause one or more of the results mentioned in this section. If the possession can be otherwise accounted for,—as where the accused goes with a *dao* to cut another man's tree and uses it on the spur of the moment as a weapon of offence against a person resisting him,—the offence will not be under this section (*Nga Shan Gale*, *10 Burma L. R. 87*). If however the possession can not be otherwise accounted for, it will in itself be an evidence of preparation under this section.

Procedure.—Cognizable,—Warrant,—Not Bailable,—Not Compoundable,—Triable by Court of Sessions, Presidency Magistrate, or Magistrate of the First Class.

Whipping.—For a first offence the offender may be

punished with whipping in lieu of the punishment provided for in the section ; for a second or subsequent offence whipping may be inflicted in addition to that punishment.

INVESTIGATION.

Immediately on receipt of information of a case of theft the investigating officer should decide what preliminary steps should be taken before he leaves for the place of occurrence. If the accused is believed to have taken a particular route, arrangements should be made to track him. If the theft is suspected to have been committed by a member of a criminal tribe or gang, immediate enquiry should be started with a view to trace the halting place of the gang and search for the stolen property if it is traced. In cases in which currency notes of high value or sovereigns are stolen, information should at once be given to the local and neighbouring treasuries, as well as to other places where they are likely to be taken for encashment or change. Immediate intimation should similarly be given to gold and silver-smiths in cases in which ornaments or other valuables of like nature are stolen. It is not indeed possible to give any exhaustive instructions on this point as the line of action to be taken in each case will depend to a large extent on its nature and attendant circumstances, but what the investigating officer should do in every case is to calmly consider and decide what preliminary actions may be useful. He should keep a note of the actions taken and issue definite written instructions to the officers employed for the purpose. Notes should similarly be kept of the results obtained.

(a) Preparation :—

It should always be borne in mind that important thefts and burglaries are very seldom committed without some previous preparation. This preparation consists mainly in obtaining information about the locality and the house as well as about the inmates. All sorts of persons in various capacities, such as beggars, infirm persons, people asking for loan of money, a foreigner who comes to the house in the evening and asks for a night's shelter saying he is on a long journey, may make their business but an excuse for exploring localities. About this the investigating officer will probably get a negative answer when he questions the inmates of the house or their neighbours, but if he persists in putting pointed questions, (e. g. did you see a beggar? etc.), he may get hold of something useful. Having thus found that a certain nubmer of persons had visited the locality previous to the theft, the next step would be to reduce their number and eliminate those who are not suspicious. He will next try to find out if there is not a certain analogy in the behaviour of the persons who visited, because it is generally seen that one person is not sufficient to obtain all information. All the inmates of the house as well as others who saw them are to be questioned regarding the behaviour of such persons and their answers combined. The enquiry should not be confined to foreign visitors. Persons of apparently unsuspicious character, such as dismissed servants, neighbours or even relations, may act as scouts or spies.

It is a part of the scout's business to poison the watch dog. If the death of the dog can not otherwise be accounted for, a burglary or theft in the house may be expected. Bitches are also employed at the time of the commission of the offence to attract away the watch dog. It is for this purpose that wandering tribes keep bitches with themselves. If, then, a theft

has taken place and it is concluded that the dog was thus drawn far away from the house, enquiry should be made about wandering tribes or other people who are in possession of bitches and were seen in the locality about the time the occurrence took place.

(b) Accomplices :—

Important thefts and burglaries are usually committed with the help of persons who keep watch or mount guard. They would often try to conceal their presence, but they are not always very particular about it and would rather attract attention of a passerby or intruder and be accosted by him, thus keeping him engaged and giving, in case of necessity, signal to his comrades working inside the house. The part of a watcher is also played by women and boys. In a big burglary or theft the investigating officer should, without delay, employ some one to trace the watcher as he must have been seen by some person or other in the locality. In this the investigating officer should proceed with much caution so as to avoid scaring people as most of them, when questioned about this, often imagine that they are going to be made responsible for the offence.

Besides big thefts and burglaries accomplices are also necessary in committing pocket-picking, railway theft or theft from hotels etc. The pick-pocket's confederate will do something to gather together a crowd by drawing the attention of the passersby to some object or other or in offering himself as an object of curiosity ; he would often find some excuse to touch or get hold of the victim while his principal goes on with the operation. The stolen property is also passed on to the accomplice (see "Criminal Tribes" for parts played by various sorts of accomplices).

(c) Theft itself :—

The first thing necessary is the careful examination of the

spot, because every thief has his peculiar mode of operation. For this the investigating officer should be well acquainted with the *modus-operandi* of the most important local thieves and a register with sufficient details should be maintained where recognized gangs are known to work. Secondly, quite a series of crime, the authors of which are unknown, may be attributed to the same person, the expert investigating officer noting a common characteristic in them all. It is for this that the investigating officer should, as has already been stated, not only examine the Crime Register of the locality but go through as many as possible of the records of similar cases which had occurred in the locality or its neighbourhood. If a man is arrested in course of the investigation it may be seen that his mode of operation in the case resembles that in some previous undetected cases, and as such the investigating officer may make him responsible for all of them.

POCKET-PICKING.

The investigation of this form of crime is very difficult as the criminal leaves hardly any trace of the crime if he can once clear away. The investigating officer has, in a case like this, only to question the victim and ascertain from him if he had noticed any person coming near him whose general bearing looked suspicious, e. g. a man brushing against him in a peculiar way, or touching him or drawing his attention to some object or other. The investigating officer would often receive answers in the negative but if he rests contented with these first answers, he would hardly have any chance of laying hands on the pick-pocket. The attention of the victim must therefore be directed towards all persons who have come across him or have talked with him, asked for some information, requested a light for a cigarette, or who have rendered him any kind of service such as seizing him all on a sudden

and drawing him to one side to prevent him from being run over by a carriage or colliding with another man. What chiefly characterizes pocket-picking is that it is always, or very nearly always, committed with the aid of a comrade, and if the victim is carefully questioned the investigating officer is likely to elicit some information which would help him in tracing either the principal or the accomplice.

The pick-pocket employs various methods in carrying out his work and many of these methods still remain the secret of the operators themselves. The general procedure however remains always the same ; the criminal approaches his victim with an inoffensive appearance, observes him attentively, tries to find out which pocket contains his money, usually by watching him when he makes any purchase, and posts a confederate to help him in his operation. The usual method is to draw out the article with the hand which is transformed into a kind of scissors. This is done either by stretching out the whole hand and forming the scissors by keeping the first and second finger on one side and the third and fourth on the other side, or by stretching out the first and second finger only and doubling the thumb and the third and fourth back into the palm of the hand. The other common method is to cut the pocket with a small knife which is often carried by the criminal in a signet ring or bracelet. Small bent knives in the shape of a half-ring are also carried by some classes of pick-pockets under their tongue. With these knives they rip holes in pockets and bundles so quietly that the victim never comes to detect his loss till he actually looks for his valuables.

DOMESTIC THEFTS.

A theft which appears to the investigating officer to have been committed by an inmate of the house should be very carefully investigated. Experience shows that as soon as the

investigating officer finds that the crime does not indicate the hand of an outsider he directs his attention towards the servants of the house, and they become in many cases the victims to false charges and groundless suspicions. An investigating officer naturally leans towards this as the investigation presents a very easy front, the only thing he has to do is to convince himself that the theft could not have been committed by an outsider, question the servant about his associates and recent movements, search his belongings and those of his confederates and make enquiry about his antecedents. Suspicion becomes stronger if the servant had only recently entered the service or had been showing an inclination to leave it. In cases like these the investigating officer should proceed very cautiously as the chances of a hasty conclusion are very great. It should first be seen if the article alleged to have been stolen could probably have been lost or mislaid, or if the case is of a more delicate nature in which the wife or children of the victim are themselves the criminals. Even when the stolen article is found among the belongings of the suspected servant, the investigating officer should proceed very carefully and ascertain if it could have been placed there by another servant or inmate of the house jealous of him. In all cases a very careful examination of all possible circumstances in which the removal of the property could have been effected should be made. After this is done and suspicion still falls irresistibly on a particular servant, a patient verification of his antecedents should be made and present mode of life looked into, including his earnings, savings and expenditure since he entered the service. It should also be found out if the master of the house has defective watchfulness and if the suspected servant ever tested it with a view to ascertain how far and in what way it could be taken advantage of.

CHAPTER III.

ROBBERY AND DACOITY.

396. In all robbery there is either theft or extortion. Theft is "robbery" if, in order to the committing of theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by puting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear or instant death, of instant hurt, or of instant wrongful restraint.

Comment.

Extortion :—"Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or any thing signed and sealed, which may be converted into a valuable security, commits extortion."

Robbery is an aggravated form of either theft or extortion. It is either theft with homicide, hurt or wrongful restraint, or with an attempt to commit, or with criminal intimidation of committing those offences, or extortion with similar criminal intimidation coupled with the fact that the offender is in the presence of the person intimidated and the delivery of the thing extorted is made then and there.

In practice, however, it is very frequently a matter of doubt whether a particular act of robbery is a theft or an extortion, while a large proportion of them are a combination of both theft and extortion, e.g. where the offender seizes the victim, threatens to murder him unless he delivers his property and instantly begins to pull off the ornaments. Here, some of the ornaments may be actually pulled off, and some delivered with consent. But the question of consent is altogether immaterial when it is obtained by threat or violence.

"The prose[illegible]r must [illegible] prove that he was actually in bodily fear, [illegible] cumstances from which the Court may [illegible] of apprehension of danger as would in[illegible] property, and in the latter case if the [illegible]d are such as are calculated to creat[illegible] will not pursue the enquiry further an[illegible] fear actually existed".—*Fost 128.*

It is not necessary that the injury or fear of injury should be in respect of the person robbed.

Carrying away, for that end:—It is robbery even when the threat or violence is caused after the commission of the theft *in order to* carry away the stolen property. (In this the Indian Law differs from the English Law, as, according to the latter, the force which converts theft into robbery must be used before the theft or at the time of its commission). But if the motive for causing the hurt or intimidation is not carrying away of the property but something else, such as avoiding capture, it is not robbery. Where the accused abandoned the stolen property and threw stones at his pursuer to prevent him from continuing the pursuit or effecting the arrest, the offence committed was theft and not robbery. (*Kalio Kerio B.U.C.* 65). Even if the hurt etc. is caused at the time of the commission of the theft but solely in order to avoid capture, the offence will be theft and not robbery. The use of violence will convert theft into robbery only when it is caused *for one of the ends* specified in the section. Where hurt or fear of instant hurt is caused by 5 or more persons for the purpose of dispossessing persons already in possession of some premises and has no relation to the commission of theft, although theft may have been committed at the same time as a perfectly independent act, it does not amount to robbery (*Otaruddy Manjhi V. Kafiluddi Manjhi*, 5 *C W.N.* 372). Where a child of 4 years of age was stripped of his ornaments and then, when the child threatened to tell his mother, he was beaten, it was held that the offence was theft and not robbery. (*Padamsing*, 6 *C.P.L.R.* 36).

Voluntarily.—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it

(*Section 39 Penal Code*). If the hurt etc. caused are accidental, as, for instance, by dropping a thing on the owner and thereby causing hurt though the offender had no intention to cause it, the offence will not be robbery. Where the accused, while intending to steal a basket and for that end in cutting the string by which it was tied, accidentally cut the wrist of its owner who tried to seize and keep the basket, it was held that he committed theft and not robbery (*Edwards, 1 Cox 32*). Such would be the case if a person forcibly pulls out a woman's nose-ring and it thereby gets unfastened without tearing the nose. If however there is pain and effusion of blood, as in the case of a person who snatched an ear-ring from a lady's ear and thereby tore the ear, it would be robbery. (*James Lapier, 1 Leach 320*). The main point to be noticed in cases like these is whether the offender had indubitably an intention to cause hurt and if the hurt was caused or attempted to be caused with that intention. The mere snatching away of a thing from the person of another is not robbery, but it is aggravated into robbery if the offender knows that the thing snatched away is fastened to something else on the owner's body in such a way that the use of force in wrenching it away would cause bodily pain. So, where a person snatched a diamond pin from a lady's person, and in doing so tore away a part of her hair to which the pin was fastened, it was held that he committed robbery. (*Robert Moore 1 Leach 335*). So, where a person caught hold of the chain which the complainant wore round his neck and tore it off with two or three jerks and then made off with it (*George Mason, R. and R. 419*), and where a person ran up against another to confuse him, while he picked his pocket, the force used was held to be sufficient to constitute robbery. (*Annon, 1 Lewin, 300*).

To any person.—i. e. any person other than himself (*Madho Singh P. R. No. 22 of 1878*).

Death.—The word "death" denotes the death of a human being unless the contrary appears from the context. (Section 46 I.P.C.).

Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause 'hurt' (S. 319 I.P.C.).

The authors of the Code say "many of the offences which fall under the head of hurt will also fall under the head of assault. A stab or blow which fractures a limb, the flinging of boiling water over a person are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion and places it on the table of another, a person who conceals a scythe in the grass on which another is in the habit of walking, a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt. We propose to designate all pain, disease and infirmity by the name of hurt."

Harm so slight, that no person of ordinary sense and temper would complain of it, is excluded by section 95 I.P.C.

Pulling a woman by the hair is held to be hurt.

Infirmity denotes inability of an organ to perform its normal function. It does not necessarily produce bodily pain, e. g. temporary infirmity caused by the administration of chloroform or alcohol.

Wrongful Restraint.—"Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person". (Section 339 I.P.C.).

The accused intercepted a boat conveying property, representing themselves to be persons in authority and saying that the boat was required by a Magistrate to convey treasure. They then plundered the boat. It was held that they were guilty of robbery. (*Duleeloodeen Sikh, 5 W. R. 19*).

Where a police officer obtained Rs. 7 from two prisoners on a promise of releasing them and threatened them that unless they gave him Rs. 200, he would confine them in the lock up and keep them there for months while a charge of bribery against them in respect of Rs. 7 was being investigated, and on his threat he was allowed to take certain ornaments, it was held that the offence committed was robbery. (*Basant Rai, P. R. No. 12 of 1896*). So, where a person received a sum of money from a woman as the price of his forbearance to commit rape on her, it was held to be robbery, though the assault was originally with the intention to commit rape. (*Blackburn's case, 2 East P. C. 16*). As wrongful confinement is an aggravated form of wrongful restraint, it is robbery whether a person is wrongfully confined or restrained.

'**Fear of instant death etc.**'—Causing or attempting to cause death, hurt or restraint depends upon the act of the offender, but causing fear of such death, hurt or restraint depends more on the feelings reasonably engendered by the circumnstances of the case in the mind of the person aggrieved than on any overt act of the offender himself. When a large number of persons invaded a house with a view to plunder its contents, and the complainant escaped from the house before the accused effected their entry, the fact that there was no overt act on the part of the accused to frighten the complainant would not minimize the offence into any thing less than dacoity (*Kissoree Pater, 7 W. R. 35*).

'**Presence.**'—It is not necessary that the offender should be face to face (or in full view of) the person threatened ; it is enough if he is "sufficiently near" to be able to execute his threat at once if necessary ;—e. g. when one levels a pistol from behind a bush at another passing along a road. Again, it is not necessary that the threatener should possess the present capacity

of executing the threat, as, for instance, where he presents an unloaded pistol.

It is not necessary that the threat should be to injure the person who delivers the property. If a police officer threatens to wrongfully confine a person and thereby induces his relatives to deliver money, he would be guilty of robbery.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity.'

Comment.

Dacoity is robbery committed by five or more persons. Abettors who are present when the offence is committed are included in the number. Knowing of a design to commit dacoity, and voluntarily concealing the existence of that design, with the knowledge that such concealment will facilitate the commission of dacoity, does not amount to an abetment of the dacoity (*Jhugroo, 4 W. R. 2*). In order to count as a dacoit a person must either take part in the actual commission of the theft or extortion, or *be present* and assist in such commission. Mere abetment is not enough to constitute an offence under this section, as in the case of a blacksmith who makes false keys or burgling instruments with which a dacoity is committed, unless such abettor is present at the scene of the occurrence and *aids* in the commission of the crime. Similarly, abetment by illegal omission, even when the abettor

is present, will not constitute an offence under this section, *e.g.* where a policeman sees a number of dacoits plunder a house but runs away from cowardice without offering any resistance or trying to apprehend any dacoit which it is his duty to do. Again, aiding does not necessarily imply an overt act on the part of the aider, as in the case of persons who are present to overawe opposition and may therefore be said to be aiding in the commission of the dacoity by their very presence. There will be no difference even if such persons are posted at some distance from the actual scene of the crime.

Robbery is dacoity where the number of persons committing it is five or more. Where the evidence showed that there were six robbers but at the trial three were acquitted,it was held that a conviction under this section was not sustainable and that the accused should be convicted under section 392 (*Pidda Ennumandugaru, 7 M. L. T. 340*).

The essence of the offence under this section is that there should be either actual or threatened violence with a view to the taking of the property. It is not necessary that the force or menace should be displayed by any overt act, it may be implied in the conduct or character of the accused. The gravity of the offence is not reduced by the fact that no actual hurt was caused because no one dared to resist the offenders. (*Chandra Krishna, 10 Bom. L.R. 632*). The offence is complete where there is a wrongful seizure accompanied with force or show of force, but it is not proper to magnify every petty case of such seizure into dacoity. Where several Hindoos acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing wrongful gain to themselves or wrongful loss to the owner of the cattle but for the purpose of preventing the slaughter of the cows, it was held that they could not be convicted of dacoity

but only of riot. (*Ragunath Ray, 15 All. 22*). In a subsequent case, however, it has been laid down as a principle that the nature of the offence in case like this should be determined from the facts and circumstances of each case. Where, therefore, a large body of Hindoos acting in concert, and apparently under the influence of religious feeling, attacked certain Mahomedans, who were driving cattle along a public road, and forcibly deprived them of the possession of such cattle under circumstances which did not imply any intention of returning the cattle to the Mahomedans, it was held that they were guilty of dacoity (*Ram Baran, 15 All. 299*). A charge of dacoity can not be sustained where the accused act under a claim of right, however erroneous, and in good faith (*Karaka Nachier 3 M.H.C. 254*).

If no property is carried off, or no attempt in the shape of a last proximate act is made for that purpose, there is no dacoity but an offence under section 402 or some other minor offences. Five men armed were discovered committing an act of house-breaking by night. One was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, but two of them were identified and put on trial. It was held that these two men were guilty of house-breaking by night and not dacoity (*Queen V. Rewat Rajwar, W.R. 1864, 39*).

Imminent fear of death or hurt etc. will be sufficient to bring a theft under this section. Where several persons attacked a house and took away property, but the inmates obtaining information before-hand had fled before the attack, it was held that the fact of the inmates running away was sufficient proof of the fear of hurt or of wrongful restraint and the accused were guilty of dacoity. (*Kishore Pater, 7 W.R. 36*).

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine, and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may extend to fourteen years.

The next section punishes attempt to commit robbery. If hurt is caused in committing robbery, section 394 applies, where there is an attempt to cause death or grievous hurt, section 397 applies, when the offender is armed with a deadly weapon, the offence comes under section 398.

Procedure—Cognizable,—Warrant,— Not-bailable,—Not-compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Punishment.—Whipping may be added as a punishment for a second offence.

Joinder of Charges.—A and B are accused of a robbery in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging them both with robbery, and A alone with murder. (*sec. 239 Cr. Pro. Code Ill* (*b*)).

A robs B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of,offences under sections 323, 392, 394 (*Ill.* (*m*) *section 235 Cr. P. Code.*)

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

In order to constitute an attempt punishable under this section there should be some overt act done by the offender

showing a clear intention to rob a person, and that act should be wrongful. Mere preparation, i.e. devising or arranging the means or measures necessary for the commission of robbery, is not an offence under this section. There must be a direct movement towards the actual commission of the theft or extortion after the preparations are made.

Procedure.—Cognizable,—Warrant,—Not bailable,—Not compoundable, Triable by Court of Sessions, Presidency Magistrate or Magistrate of the 1st class.

Punishment.—Whipping may be added on a second or subsequent conviction.

394. If any person, in committing or in attempting to commit roberry, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

Jointly Concerned.—In order to implicate others jointly committing a robbery with the person who causes the hurt, it is necessary that the hurt should be caused *in committing* the offence of robbery. If however it is entirely unconnected with that offence,as where one of the robbers causes hurt in order to satisfy a personal grudge, it will not aggravate the criminality of the others.

Procedure.—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the First class.

The two offences of robbery and voluntarily causing hurt, when combined, are punishable under section 394 alone, and not under section 392 and 394, as an offence punishable under section 394 includes the offence punishable under section 392 (*Mootkee Kora*, 2 *W. R.*). But see illustration (m) to section 235 of the Criminal Procedure Code which runs as follows :—

"A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code."

Section 394 does not apply where the offender attempts to cause hurt, or causes wrongful restraint, or fear of death, hurt or wrongful restraint. But if hurt is actually caused, and it is found that the causing of the hurt is what transmutes the theft into robbery, then, while section 392 still applies, in so much that a charge under that section should be framed, the application of section 394 and the framing of a charge thereunder should not be disregarded. (*Naga Po Lon*, 1 *L. B. R.* 232).

If a Magistrate finds that an accused person has caused grievous hurt in committing robbery, he is bound to commit him to the Court of Sessions for an offence under section 397; it is illegal to treat the grievous hurt as simple hurt and convict the accused under this section. (*Jobania*, (*1889*) *Unrep. Cr. C.* 476).

Where in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery. (*Q. Vrs. Chakar Haree*, 6 *W. R.* 16).

395. Whoever commits dacoity shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

Venue :—The offence may be enquired into or tried by a Court within the jurisdiction of which the person charged is.

Procedure :—Cognizable,—Warrant,—Not Bailable,—Not compoundable,—Triable by Court of Sessions.

Comment.

There are several sections in the Penal Code dealing with this form of crime in all its stages, from the stage of preparation up to the completion of the offence, as well as when it is attended with other circumstances which amount to an aggravation. The following are the sections :—

(1) Preparation. (S. 399).
(2) Joining dacoits. (S. 400).
(3) Assembling for dacoity. (S. 402).
(4) Simple dacoity. (S. 395).
(5) Dacoity armed with deadiy weapon. (S. 398).
(6) Dacoity with grevious hurt. (S. 397).
(7) Dacoity with murder. (S. 396).

Attempt :—Section 511 of the Indian Penal Code does not apply to a case of dacoity. The definition of dacoity includes attempt, and so a charge should be framed under section 395 in case of attempt to commit dacoity. (*Koonee. 7 W. R. 48*).

Abetment.—An abettor of dacoity is punishable under this section and section 109. (*Chattar Singh, P. R. No. 15 of 1901*).

Presumption :—When persons were found, within six hours of the commission of a dacoity, with portions of the plunder in their possession, it was held that they were participators in the dacoity and not merely receivers. (*Cassy Mul, 3 W. R. 10*). Where the prisoner was apprehended eight days after the dacoity with a part of the plunder in his possession, it was held that there was good justification for charging him with the dacoity as with having received or retained the property with guilty knowledge. (*Motee Jolaha W. R. 66*).

A person convicted of dacoity under section 395 cannot be convicted *also* of dishonestly receiving stolen property under Section 411, or of receiving property transferred by commission of dacoity under section 412, when there is no evidence of the commission of more than one offence (*Sahabut Seikh, 13 W. R. 42*).

The mere fact that a person started off with, or was found in the company of, others who are proved to be dacoits does not make him liable under this section (*Kamal Fukeer, 17 W. R. 50*). Such a circumstance may raise a presumption against the accused, and is indeed a link in the chain of evidence, but there should be no conviction for dacoity unless there is, in addition, evidence of the conjoint commission of, or an attempt to commit a robbery, or at least that of presence and aid as required by section 391. If the evidence falls short of this, the accused may be liable only as an abettor, as in the case of a person who points out the house to be robbed, or participates in planning the dacoity or takes charge of animals used by some of the party whilst the offence is being committed (*Chattar Singh, P. R. No. 15*).

Punishment :—A sentence of imprisonment must be awarded, and that of fine only is illegal. (*Bhoja, 6 W. R. 54*). But as the section prescribes no minimum, the requirements

of the law will be sufficiently complied with if the imprisonment is till the rising of the Court. Sentence of transportation under this section must be either for life or for a period not exceeding ten years if given in lieu of imprisonment (*Arura, 1 Cr. L. J. R. 89*).

For a second or subsequent conviction under this section whipping may be awarded in addition to any sentence of imprisonment. (*Udai Patnaik, 4 B. L. R. 5*).

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions.

Comment.

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under this section, but he cannot be separately convicted of murder (S. 302) and of dacoity (*Rughoo, W. R. 30, (1864)*). If, when a dacoity is planned, murder is comtemplated from the first and is committed in the dacoity, any person who joins in the conspiracy, is liable under section 302 read with section 109 to transportation for life even if he does not eventually join in the commission of the dacoity by the other conspirators (*Sukhra, 10 C. P. L. R. 20*).

Murder :—Any death caused in the course of the commission of a dacoity would be murder if it has all the ingredients

of a culpable homicide. The exceptions which mitigate the offence of murder into one of culpable homicide not amounting to murder have no application in a case like this. Proof of the commission of culpable homicide is therefore sufficient to bring the offence under this section. Culpable homicide is defined in the Penal Code as follows :—

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."

Conjointly committing dacoity.—The essence of an offence under this section is that the dacoity is the joint act of the persons concerned and the murder is committed in the course of the commission of the dacoity. (*Mathura Thakur, 6 C. W. N. 72*). It is not necessary to establish the charge of murder against any particular person, so long as it is proved that the death was the effect of the cumulative violence of the gang.

Investigation into the extent of individual ill treatment is of course necessary for the purpose of determining the appropriate sentence in the case of each person concerned. The responsibility for murder is, according to this section, extended to the whole gang who are participating in the commission of the same dacoity along with the dacoit who commits the murder in the progress of, and in the pursuance of, the commission of the dacoity. (*Chittoo, P. R. No. 4 of 1900*). It is necessary to establish that the murder was committed *in* committing the dacoity, otherwise persons other than those actually committing the murder cannot be held liable under this section. The accused was the proprietor of a plot of land which had been sold in execution of a decree and purchased by the prosecutor. The prosecutor began reaping the crops with the help of a number of reapers when the accused, with a large number of men, attacked them, and, in the course of the assault, a man belonging to the prosecutor's party was killed while he was flying away from the field with the rest of the reapers. It was held that there was no joint liability for the murder under this section as the assult was not committed for the end of theft. (*Mathura Thakur, 6 C. W. N. 72*). The same view was held in a case in which the dacoits were unsuccessful in carrying away any property on account of the opposition of the villagers, and while attempting to escape, one or more of them killed one of the pursuing party in order to facilitate the escape (*Chandar, 26 A. W. N. 47*). The responsibility for the murder should be, in such cases, confined to the actual murderer and cannot extend to the whole gang. Murder committed by dacoits while carrying stolen property is murder committed *in* the commission of dacoity. (*Vitti Thevan, 17 M. L. J. R. 118*). Where the common object of an assembly was to commit dacoity and there was a general purpose to resist all opposition even to

the point of death, the unlawful assembly committed a dacoity and; while retreating on the advent of villagers, one of its members killed one of the villagers, it was held that the murder was committed in prosecution of the common object of the assembly, in as much as it was committed in effecting a safe retreat and the retreat was not so separated by time or space from the main offence (dacoity) as not to form part of it. (*Sakharam Khandoo, 2 Bom, L. R. 325*).

In the case of *Umrao Singh* (*16 All. 437*) the Allahabad High Court held that inorder to support the conviction of a particular dacoit under this section it was necessary to show that the murder was committed in his presence. But it has subsequently been held that it is immaterial whether the particular dacoit was inside or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder is committed in the commission of the dacoity (*Teja, 17 All. 86 ;Sakharam Khandu, 2 Bom. L.R. 325 ; Chittu, P. R. No.4 ; Chattar Singh, P. R. No. 15*).

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Procedure.—Cognizable,—Warrant,—Not bailable—Not compoundable,—Triable by Court of Sessions.

Where, in a case of robbery, there was no intention of causing death, or such bodily injury as was likely to cause death, the conviction must be under this section of "volun-

tarily causing grievous hurt in commission of robbery" *(Chakar Haree, 6 W. R. 16).*

A person cannot be legally punished under this section when he is only charged under section 395 *(Punya Sakharam, B. U. C. 921).* As this section does not create a substantive offence, the charge should be under section 392 read with section 397, or section 395 read with section 397, as the case may be *(Bhagwant, 3 O. C. 263).*

Comment.

Scope.—This section is only a rider to section 394, and fixes a minimum punishment when the commission of robbery is attended with certain aggravating circumstances, viz,—(1) use of deadly weapon, (2) Causing grievous hurt, (3) attempting to cause death or grievous hurt.

'Uses'.—The word would ordinarily mean an actual application of the weapon for the purpose for which it is carried, e. g. to use a stabbing weapon is to stab some one with it, to use a gun is to shoot with it, etc. A very wide interpretation has, however, been given to the word by the Chief Court of Lower Burma which held in a case that the expression must include the *carrying* of a weapon for the purpose of overawing the person robbed *(Naga 1, 6 L. B. R. 41).*

Deadly Weapons.—Such as fire-arms, swords etc. A *lathi* is not a deadly weapon within the meaning of this section. *(Lad Khan, 13 P. L. R. No. 117 of 1912).* Stout male bamboos have been held to be deadly weapons. *(Krishna Chheti, 1 Weir, 70).*

Grievous hurt.—The following kinds of hurt only are designated as "grievous",—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent imparing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face. (Branding a girl's cheeks with a red-hot iron, which left scars of a permanent character, was held to be disfigurement contemplated by this section (*Anta Dadoba*, *1 B. H. C. 101*).

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

(The mere fact that a man has been in hospital for twenty days is not sufficient ; it must be proved that during that time he was unable to follow his ordinary pursuits.—*Vasta Chela 19 Bom. 247*).

At the time of Committing.—The violence should be caused in furtherance of an intention to rob. The accused fractured one of the arms of a woman and thereby caused her to fall to the ground, his object being to steal the pony on which she was riding. He then attempted to mount and ride off on the pony, but could not do so on account of the girth of the saddle breaking. It was held that this section was applicable. (*Harnaman*, *P. R. 6 of 1901*). The accused and another attacked a man and broke his finger in course of an assault with *lathis*, but there was no evidence to show who struch the blow which broke the finger. It was held that the accused was not liable under this section. (*Bhagwant*, 3 *O. C.* 263). The liability under this section is limited to the offender

who actually causes grievous hurt or uses a deadly weapon, and does not affect the persons associated with such offender in one offence (*Nga Sein 3 L. B. R.* 121). The punishment provided for in this section does not apply to such persons as may be liable for grievous hurt, committed by one of the party, only in virtue of section 34 of the Penal Code (*Senta*, 19 *A. W. N.* 186 ; *Arunachella Thevan*, 22 *M. L. J. R. 186*).

Punishment.—The maximum term of imprisonment that can be passed under this section cannot exceed ten years. (*Nama Dulab (1908) Criminal Revisional Application No.* 223 *Bombay*).

398. If, at the time of attempting to commit robbery or docoity, the offender is armed with any deadly weapon, the improsonment with which such offender shall be punished shall not be less than seven years.

Procedure.—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions.

Comment.

This section applies to such of the offenders as are armed, even if they do not use the arm in the attempt to commit the substantive offence.

Offender.—The liability under this section is limited to the offender who is actually armed with a deadly weapon. It is necessary to show that the *accused* carried the weapon and not merely that one of the robbers who was with the accused at the time of committing the robbery carried one. (*Bhabjya, Cr. R. 54 of 1895*).

Liability of accomplices under section, 394, 396, 397, 398 :—If, at the time of committing robbery or dacoity or of

attempting to commit robbery, any of the robbers or dacoits use or carry arms, those only who are so armed will be responsible under sections 397 and 398, and those only who cause any grevious hurt or attempt to cause death will be responsible for such violence (*Section 397* ; *Reg. V. Deoji Keru, B. R. 1st. August 1872*), unless death be actually caused, in which case each one in the company will be guilty of murder if the offence be dacoity (*Section* 396). If death is caused in the commission of robbery, there is no special provision in the law to deal with the case of accomplices who do not actually take part in the murder, but the case of each such accomplice should be dealt with under section 114 Penal Code and he will, if present as an abettor, be deemed to have committed the principal offence and may receive the same punishment as the principal. If hurt only, and not grievous hurt, be caused in the commission of a robbery, then the graver responsibility will lie not only on the person who causes the hurt but also on those who assist in the robbery (*Section 394*).

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable, Not compoundable,—Triable by Court of Session.

Comment.

Preparation.—"Preparation consists in devising or arranging the means or measures necessary for the commission of the offence". (*Ratanlal's Law of Crimes, page, 1081*). It follows, in many instances, the formation of the intention to commit a crime, but is a stage of the proceeding short of actual "attempt" which is an external act, something tangible and

ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence (*Ganesh Balvant Modak*, 12 *Bom. L. R.* 21) and "forming part of a series of acts which would constitute its actual commission if it were not interrupted" (*Stephen's Digest of Criminal Law*).

Makes any preparation.—These words point to acts done prior to a commencement of the execution of the guilty purpose to commit a dacoity. It must however be something more than a mere mental determination. There should be evidence of some overt acts to get ready for a dacoity,—such as the collection of men, arms or provision, or the actual expedition even if no particular dacoity is planned,—which, coupled with other circumstances, plainly manifest the intention to commit dacoity. (*M. & M. 337*). It does not appear that it is necessary to prove that the offender has an intention to take part in the actual dacoity ; he may, by merely organising a dacoity, render himself liable under this section though he does not proceed further. The case of an aider and abettor, e. g. a person who sells a gun to a dacoit knowing that the same is going to be used in the commission of a dacoity, does not come under this section though he would be guilty of abetment. A mere assembly without further preparation is not punishable as preparation (*Romesh Chandra Banerjee, 18 C. W. N. 498*).

There are cases in which the distinction between a preparation and an attempt is rather fine. An attempt on the part of the dacoits to cut a hole in the wall of the house which they intend to rob would be punishable under this section as a preparation and not an attempt to commit dacoity (*Beni, 23 All. 78*), but when the hole is completed and one of the dacoits effects entrance it should be said that the stage of preparation is passed though it is doubtful if such an act can be held as an

attempt to commit dacoity even when considered in the light of the attendant circumstances which tend to show that the intention of the party was to commit a dacoity.

400. Whoever, at any time after the passing of this Act shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Venue :—The same as section 395.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session.

Comment.

The object of this section is to punish those who enlist themselves in a gang of persons whose business is the habitual commission of dacoity. It is therefore necessary to prove :—

(1) the existence of a gang.

(2) that such gang was associated for the purpose of habitually committing dacoity.

(3) that the accused belonged to the gang.

Gang —The word 'gang' (Sanskrit *gam* to go) literally means a number of persons going together. According to its usual import the word implies a number of persons associated together for a particular purpose,—not a casual or temporary purpose but one of a more or less permanent nature. This section contemplates such a gang as has for its common purpose the systematic commission of dacoities. What is necessary to prove is that the gang is associated for habitual dacoities, and not necessarily that a particular member is a dacoit by habit. One who commits a number of dacoities by joining different gangs may be a habitual dacoit, but he is not liable to

punishment under this section unless it is proved that he is the accepted member of any one of such gangs, the other members of which were themselves associated for the purpose of habitually committing dacoities. It is necessary therefore that the commission of dacoities should be traced to the *gang*, or, in other words, it should be shown that in each of these dacoities a group of some specific individuals were, either by themselves or in company with some others, conjointly concerned. This group of individuals is the nucleus of the gang, and its existence and purpose of association should be proved first.

The next question is how many dacoities should be traced to the gang inorder to prove habit. The word "habitually" occurs also in section 413 (habitually receiving or dealing in stolen property) and its import was discussed in the case of *Baburam Kansari (19 Cal. 190)* by Norris and Beverly J. J. who said "The very essence of the offence...is the habitual, that is to say, *constant* receipt. We do not think that a man can be said to be habitually receiving stolen goods who may receive the proceeds of a dozen different robberies from a dozen different thieves on the same day, but in addition to the receipt from different persons there must be a receipt on different occasions and on different dates." Following this interpretation of the word it may be said that the commission of a number of dacoities on the same day would not condemn the offenders into habitual dacoits ; in order to prove habit it must be shown that there were *plurality* of dacoities in which the gang took part and which were committed on different occasions and on different dates. The association and its purpose may be proved either by direct evidence or from facts which lead to a reasonable inference about them. The fact that the accused, or groups of them, had been concerned in a large number of dacoities in a comparatively short space of time may be sufficient evidence of such association (*Bonigiri*

Pattigadu, 32 Mad. 171). The purpose of the association may be proved by evidence of previous dacoities committed by the gang in which its members were convicted, and evidence of such previous conviction is on that account admissible (*Nabakumar Patnaik, 1 C.W.N.* 146, *see also Kartick Chandra Das,* 14 *Cal. 710, and Mankura Pasi 27 Cal, 139*). But these convictions must be of a date anterior to the date specified in the charge under trial. The fact that some of the persons undergoing trial for an offence under this section had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against accused persons after they are acquitted (*Kader Sandar, 16 C.W.N.*,69). Where association for the purpose of habitually committing dacoity had not been made out, the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under section 110 Criminal Procedure Code, was of no consequence (*Kader Sandar,* supra.) If previous convictions are relied on for the purpose of proving habit, they must be of the offence of dacoity and not of other offence such as house-breaking or robbery.

Belong :—The word "belong" implies something more than mere association with the gang. It must be proved that the accused joined the gang in order to re-inforce it for the purpose of dacoity and had the same community of intention and purpose as the other members. It is not necessary, however, to prove that he actually participated in any dacoity that might have been committed by the gang, but actual participation in such a dacoity is good evidence to prove his association with the gang and his object in such association. The mere fact that women lived as wives or mistresses with men who were dacoits is not sufficient for a Court to hold that they belonged to a gang

of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated with their husbands or protectors for the purpose of themselves habitually committing dacoities (*Yelli Kom Yalla, B.U.C. 863*). A person can not be said to belong to a gang of dacoits in respect of whom the Court is satisfied that his connection with the gang was limited and was always intended to be limited to a series of acts, none of which amounted either to dacoity or abetment of dacoity though they might be punishable under section 216 A (*Gaya Din, 13 O.C. 235*).

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of the first class.

Comment.

This section has no doubt excellent object and uses, but it ought not to be resorted to when the persons sought to be brought within its four corners might have been made responsible for distinct individual offences : nor it is intended to affect them, unless an association for the habitual commission of theft or robbery is clearly made out. (*Jehangira, A. W. N. 16*).

For the import of the words 'belong', 'gang' 'associated' and 'habitualy' see section 400.

Evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit, and for this purpose convictions of bad livelihood are more cognet than isolated thefts (*Bhona*, *38 Cal* 408). It should be noted that evidence of bad character or reputation is inadmissible as the character of the accused is not a fact in issue in a trial under this section or section 400. (*Mankura Pasi*, 27 *Cal*, *139*), but, for the purpose of determining whether a party of accused persons constituted a gang of persons associated for the purpose of habitual theft, the evidence that each individual of that party is a *convicted* thief is relevant. Such evidence can be tendered before or after the prosecution has established the association (*Tukaram Mulhari*, *14 Bom. L.R. 373*). As evidence of association (in a trial under this section or section 400) the prosecution may prove orders for security for good behaviour when two or more of the accused have been bound over in one proceeding under section 110 (a), (b), (c). (*Bengal Police Regulations*, *Vol. V. Rule 81*). The possession of stolen property by the gang, and the fact that the country through which the gang passed was free from petty crimes when they were not about, are admissible facts (*Dukharan*, 7 O. C. 163). Where it was proved that certain persons were found together at some distance from their house, that they were all intimately connected with one another and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses, it was held that they could not be convicted under this section, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft. (*Mankura Pashi*, 27 *Cal*, 259).

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable.—Warrant.—Not bailable.—Not compoundable.—Triable by Court of Session.

Comment.

The essence of the crime lies not in the assemblage of men as in the purpose for which they assemble. It is for the prosecution to prove this purpose, but it is not always possible to do so by adducing evidence of actual intention. The only evidence that may be available in such cases is the evidence of such conduct on the part of the accused and circumstances as may justify an inference that the intention of the persons assembled was to commit dacoity. So, where the five accused were found at eleven o' clock at night on a road just outside the city of Agra, all armed with guns and swords concealed under their clothes, and for carrying which they had no licenses, and none of them could give any reasonable explanation of his presence under the particular circumstances and at that hour of the night, it was held that they were guilty under this section. In this case the court took judicial notice of the fact that there were at that time frequent dacoities in the district of Agra. (*Bholu* 23 *All.* 124). In another case the Police arrested the accused acting upon the information supplied by some villagers who, immediately after the commission of a dacoity in the village, traced the steps of the dacoits to their haunt in a jungle. The man in whose house the dacoity was committed identified one of the accused as amongst the dacoits. There

was confession to the effect that all the persons of the assembly lived on the proceeds of dacoity and had no other means of living. It was held that they were guilty under this section. (*Kendra Kamar* 7 *W.R.* 61).

The intention of the section seems to be that the assemblage should be immediately preceding a dacoity or an expedition with the determination to commit dacoity, and not an assemblage for concerting plans for the commission of a dacoity on some distant date.

INVESTIGATION.

1. DACOITY AND ROBBERY.

It is a widespread and lucrative form of crime in this country and is often difficult to detect. The difficulty in detection arises from the nature of the crime itself as well as from that of the criminals and their supporters. In most cases the criminals take the utmost care to conceal their indentity and leave no traces behind, while the property carried away is difficult to identify, being either cash or ornaments which can easily be melted. Villagers are either afraid to speak against the criminals or unwilling to do so inorder to avoid the worry of attending courts. The supporter of the gang is almost invariably one of the most influential men of the locality whom to handle is always difficult and at times delicate, and it often happens that the investigating officer prefers to leave him alone or proceeds against him with such extreme caution that he arrives at nothing substantial.

Difficulties in the investigation of a case of dacoity or robbery arise in other ways as well. In the majority of cases the complainant and his neighbours will give no clue even when they can, or, what is even worse, give wrong clues from the very

beginning. It is against the latter that the investigating officer has specially to guard himself. When the complainant names some accused, either at the time of lodging information or immediately after the Police reach the spot, the investigating officer feels a sense of a relief as he gets hold of some pegs to hang his investigation on, and corroborative evidence is not wanting if he allows himself to be drifted along. In such cases the investigating officer should proceed with extreme caution and see if there is any influence working behind. The events which immediately followed the dacoity and preceded the informant's departure for the police station or the investigating officer's arrival at the spot should be very carefully scrutinized, and the statements made by the complainant or the inmates of his house before the villagers, as well as those of the villagers themselves made before one another, minutely looked into. It is always prudent to record such statements in detail and compare them. No arrests should ordinarily be made unless some independent testimony is forthcoming. If the complainant finds that the investigating officer does not readily accept as true whatever is stated and take action thereon he may turn round and give some really useful information. It should be remembered that the complainant's statement in such a case regarding the indentity of the accused is not always intentionally false; it is quite likely that he is the victim of what may be called a hallucination and his belief, though honest in his own eyes, is based more on inaccurate observation and imagination than clear perception. A case like this is more difficult to deal with than one of intentional lying and the best thing the investigating officer can do is to make the complainant (or a witness who corroborates him) "reconstitute" the whole affair and give a detailed account of the data from, and the circumstances under, which the inference as to the indentity of the accused was drawn.

Intentionally false cases of dacoity are very rare, but such cases of robbery, specially highway robbery, are not so. A charge of robbery is often added to one of assault in order to make the case cognizable. People often pretend to have been robbed when they wish to cover up the loss of money, and would often inflict heavy injuries on their persons to support the shamming. In such a case the investigating officer should carefully see if the complainant had with him the money in trust or was accountable to somebody for it. Cases of robbery and theft are often falsely reported by the servants of absentee shopowners and business-men to hide breach of trust. The account books should, in such cases, be very carefully examined with a view to find out if there was any falsification of accounts, or an attempt at falsification, and this should be done before any other action is taken. Enquiry should then be made about the complainant's present habits and mode of life, and his private account book, if he has any, should also be checked inorder to find out if he was spending beyond his means. It should also be seen if he had borrowed any money before the alleged occurrence or attempted to borrow but failed. The delay, if any, made by the complainant in reporting the case either to his neighbours or to the Police should be carefully looked into. The statements regarding the occurrence made by the complainant before other people should be taken down in detail and compared.

The next class of cases are those in which right clues can be given by the complainant or villagers. The investigating officer should in such cases lose no time in working them up. Where there are any materials available which, if promptly handled, may lead to the tracing of the offenders it is a mistake to lose time in examining the inmates of the house in order to ascertain who got up first or raised the alarm, or in speculating how the entry was effected or a box opened. It

should always be borne in mind that the more the delay in following up a right clue the less becomes the chance of success. Lines of action should be promptly but carefully thought out and noted on a piece of paper so that no item is missed when they are worked up.

The majority of cases are however those in which the complainant and the villagers either cannot or would not give any clue. There is not much of public spirit among average Indian villagers and people would not ordinarily open their lips unless it is in their interest to do so. The investigating officer has in such cases to depend mainly on his own resources. It is difficult to lay down any general rules in cases like these, but the following hints, together with those which have already been given in the chapter on "General Principles of Investigation", may be found to be useful :—

(1) If there is indication as to the route the dacoits have taken after committing the occurrence, immediate arrangement should be made for following up the track. This should be done as promptly as possible,—even before the First Information is recorded. The police parties sent out will question villagers on their way and ascertain if anyone saw a batch of men passing.

(2) If there is a Railway near by, promp enquiry should be made at the nearest Railway Station and at least one or two stations up and down it. Similar enquiry should be made at hotels and shops near Railway Stations which sell articles of food, also at liquor, *ganja* and betel shops.

(3). Enquiry should be made at all the ferry ghats within a reasonable distance of the place of occurrence if it appears that the dacoits crossed a river. The statements of the ferrymen should always be accepted with caution and corroborative evidence sought for. It should be carefully ascertained on

what bank of the river they left the boat at night and if it was found exactly where it had been left.

(4) When leaving for the place of occurrence the investigating officer should take with himself as many officers and men as are available. They should be divided into different sections, some of them being kept ready to march out at a moment's notice at any time of the day or night.

(5) While inspecting the scene of occurrence it should be ascertained if the dacoits had any special method of operation or uttered any peculiar cries. Detailed notes regarding these should be made and compared with the *modus operandii* of known classes or gangs of dacoits.

(6) The complainant and the inmates of the house, as well as the villagers, should be very closely questioned about what happened previous to the dacoity, e. g. if any unknown man, such as an old Brahmin or a person seeking to purchase cattle or jute &c., visited the house or the locality any time before the occurrence. The investigating officer will in the majority of cases get a negative answer at first, but if he persists in putting pointed questions (such as, did you see a beggar etc.) he may get hold of something useful. A very careful enquiry should be made in order to find out if any strangers had come to, or lived in, the village or any neighbouring village previous to the dacoity.

(7) Unless there is a clear indication that the dacoity is the work of a foreign gang, a very prompt enquiry should be made about the known dacoits in the locality and its neighbourhood. If enquiry is necessary in the jurisdiction of other police stations, officers should be deputed to make the enquiry or, if no officers are available, messengers should be sent to the Thana officers requesting them to make the enquiry immediately. Enquiry slips sent by post two or three days

after the dacoity are practically of very little utility. These enquiries should, where possible, be conducted by responsible officers and should never be left in the hands of Choukidars or Duffadars.

(8) Very careful enquiry should be made about men who are away from their houses. If their whereabouts are traced they should not be arrested in a hurry, unless it is absolutely necessary to do so, but their movements should be quietly watched. If subsequently they are called upon to explain their absence they will probably come forward with the usual excuses, such as visiting a relation's house at X, or buying cattle at Y, or plying a boat at Z, and so forth, and will probably produce evidence in support of their statements. But when they will come to know that their movements have been watched and the explanations adjudged false, they will find themselves in an awkward position and will probably confess. At any rate it will be a very good evidence for a bad livelihood prosecution even if it cannot support a substantive charge.

(9) If suspicion falls on a person who had previously been suspected or concerned in any case, the investigating officer should study the record of that case as well as other records from which the career of the man can be gleaned. This will give the investigating officer an idea as to his old associates and receivers as well as the way in which he had defended himself previously. It is not at all sufficient to look up certain Registers in which the man's name is down.

(10) Enquiry should be made from the money lenders and shop-keepers of the locality where the suspects or their associates live with a view to ascertain if any one had recently cleared off his debt or any considerable portion of it, or had made purchases of an unusual nature or quantity.

(11) If house-searches are to be made they should be

arranged as promptly as possible. Much time is often lost in coming to a decision as to which houses should be searched and if a particular house should be searched without a warrant. In the latter case it often takes less time to obtain a warrant than to hesitate and finally decide if the risk of searching a house without a warrant should be taken.

(12) If it is suspected that the property has passed into the hands of a receiver no time should be lost in searching his house. A search-warrant should be obtained without delay if the grounds of suspicion are not strong enough to justify a search without warrant. To handle the receiver is often a difficult and at times a delicate task as he is almost invariably an influential man in the locality and one who has probably been always eager to be friendly to the Police. The investigating officer should therefore come quickly to a decision when the question of searching his house arises.

(13). The investigating officer should take every precaution while conducting a house-search. It is indeed a very difficult task to find out a small article from among heaps of articles contained in a house and the search usually leads to nothing unless it is conducted with patience and vigilance. While the search is going on attempt should be made to obtain from an unfriendly neighbour of the suspect informations about the places where he is likely to have concealed the property. A dacoit would not ordinarily keep the booty inside his house, but would often bury it in the adjoining homestead land, orchard or tank. If a floor is to be dug, it must be dug in all places and not merely at the corners of the room or the bases of the walls. I came across a case in which a notorious dacoit used to keep the stolen property buried exactly in the centre of his sleeping room, and his wife would invariably leave her child lying there whenever the house was searched. When the property was found she told me that the police had

searched her house any number of times but would always content themselves with digging only the corners of the room and the base of the walls and would never think of disturbing the child. If any portion of a mud floor looks suspicions, a large quantity of water should be poured and it should be seen if the water at that place filters in more rapidly than in other places and bubbles appear. While a search is made it is always necessary to watch the movements and attitude of the females of the house. Instances are not rare in which the stolen property was found boiling with rice or curry.

(14). It is not always prudent to make an arrest unless some tangible evidence is obtained against the man. If the arrest is made after such evidence is secured and the arrested man confronted with it, he may make a confession.

(15). Confessions do in some cases immediately follow an arrest. An expert dacoit would often make a statement, specially when he finds that the investigating officer is a novice. He would, in such cases, give a circumstantial account of the preparation of the dacoity, or even of some previous preparations as well, but would cleverly avoid giving such minute details of the occurrence as are capable of verification. Statements like these are always to be accepted with caution, and the investigating officer should not run away to take action thereon unless he obtains from the confessing man some definite facts concerning the occurrence or the conduct of the dacoits previous or subsequent to it, and finds them true on verification. Similar precautions should be taken in respect of the statements of a member of a gang who offers himself as an informer.

An investigating officer should not work with the object of obtaining a confession, nor should a confession be unduly realied on when it is obtained. The aim of an investigating officer should always be to obtain evidence so convincing that

the accused can not escape. If he succeeds in obtaining such evidence, the confession will often follow and will materially strengthen the case, but to seek to obtain the confession first and the corroborative evidence afterwards is to reverse the proper order of proceedings. If, however, a confession is volunteered in an enquiry, every effort must be made to ascertain if there is evidence corroborative of any point in the confession which can be verified. It should also be seen if the confession is a coherent story which can stand the test of careful examination on the spot by an impartial person.

(16) A confessing dacoit should always be kept segregated from the other men arrested in the same case, and this should be done from the very time he is produced before a Magistrate and his confession recorded. It should always be sought to have him detained in a separate jail till the trial is over.

(17) In course of an investigation into a case of dacoity which appears to be the work of local men the investigating officer should make it a point to interview in the jail such convicts as either belong to the locality or were convicted of offences against property committed in the locality,—and talk with them about local bad characters and receivers.

(2) CASES UNDER SECTION 400 or 401.

In nearly all gang cases the evidence of an approver is necessary to prove the organisation and doings of the gang. If a confession disclosing the existence of a gang and its complicity in a series of cases is obtained in the course of an investigation, the investigating officer should at once produce the confessing man before a Magistrate with a view to have his confession recorded and should consult the Superintendent of Police as to whether steps should not be taken to have the confession verified. The Superintendent of Police should

consult the District Magistrate about local verification of the confession.

If, in the course of an interview, a convict makes a similar confession, the officer to whom the statement is made shall at once inform the Superintendent of Police who shall either personally interview the convict or depute an officer not below the rank of an Inspector to record the statement. The Superintendent of Police shall immediately forward a copy of it to the Deputy Inspector-General in charge of the Criminal Investigation Department, or in political cases, to the Deputy Inspector-General in charge of the Intelligence Branch. The Deputy Inspector-General shall, on receipt of the confession or statement, use his discretion under Rule 26, Vol. VI, whether he will assume control of the investigation or leave the case to be dealt with by the local authorities under the control of the Deputy Inspector-General of the range. Pending receipt of orders from the Deputy Inspector-General in charge of the Criminal Investigation Department or Intelligence Branch, the Superintendent of Police shall take steps to have the confession recorded by a Magistrate and to follow up any clues furnished by the confessing prisoner (*Bengal Police Regulations, Vol V. Rule 106 (d)*).

The following up the clues will mainly consist in making arrests and house-searches,—as well as in tracing such unreported cases as are disclosed in the confession. Arrangements should, as far as possible, be made to have the houses searched simultaneously. It is always convenient to secure at these searches the attendance of the complainants of the cases or such other persons as are able to identify the stolen property, if any is found. This is particularly necessary when the house of a receiver is searched. If any property is seized on suspicion, the owner of the house should, while the search is going on, be made to account for its possession, and his

statement recorded in detail. Such statements should be verified as promptly as possible.

Verification of Confession.

The verification should be made with a view to corroboration, and should begin from the place where the gang assembled and started. The informer should then be taken along the route followed to the scenes of the different occurences, and the principal incidents of each crime and its attendant events should be recorded in chronological order according to his dictation. The note should be in the form of an itinerary, and should give all informations on the points mentioned below which the informer is able to give, but care should be taken that he does not supplement his statement with imaginary or only half-remembered details :—

(i) Name, father's name, residence, age and personal description of each accomplice.

(ii) The route taken by the gang.

(iii) The chief incidends during the journey of the gang from the starting point to the scene of occurrence, *i.e.*, meetings with any one, visits to any shop or house for food, oil, light, axes, etc, hiring carts or carriages, buying tickets at a railway station, crossing a ferry, etc.

(iv) The arrival of the gang at the scene of occurrence and the preliminary arrangements made, lighting torches, cutting sticks, etc.

(v) The commission of the crime, rooms entered, doors broken, persons tied up or assaulted, cries uttered or threats used, boxes taken, chests broken open, property taken, etc.

(vi) The sharing of the plunder.

(vii) The breaking up of the gang and the homeward route taken, etc.

Should the person whom it is desired to use as an approver be undergoing a substantive sentence of imprisonment in jail at the time he gives his information, it will be necessary, in order to allow the verification to take place, to move the Local Government to suspend his sentence temporarily under section 401 Criminal Procedure Code, and, as a condition of such suspension, Government will require him to remain in charge of the subordinate Magistrate whom the District Magistrate may select for the purpose of verifying his confession.

If the prisoner has been confined in jail in default of finding security, the Local Government may suspend his sentence as he has not been imprisoned for an offence within the meaning of section 401, Criminal Procedure Code. In such cases he may be released on bail, if it is forthcoming, or if not, the District Magistrate may cancel the bond under section 125 Cr. P. Code. In either case, on release, he should be re-arrested and charged with an offence under section 400 or 401 Indian Penal Code, and made over to the Magistrate in order that his confession may be recorded (if this has not already been done) and verified.—*B.P. Regulatians, Vol. V., Rule 108.*

If it is desirable that a prisoner be removed from one jail to another for the purpose of verifying his confession, either of the following procedures may be followed :—

(*a*) When the two prisons are in the same province, application should be made to the Inspector-General of Prisons to direct his transfer under section 29 (2) of the Prisoners Act, III of 1900, as amended by Act I of 1903.

(*b*) When the two prisons are in territories under two different Local Governments, then the Inspector-

General of Prisons of one province can move the Inspector-General of Prisons of the other province to effect the transfer, and application should be made accordingly.

It will also meet the circumstances if proceedings are instituted against the confessing prisoner in the district to which he is to be removed and an order is then applied for under section 37 of Act III of 1900 to the Court having jurisdiction in the form set forth in the second schedule of the Act. This procedure should be followed also in the case of all other prisoners who are accused in the gang case. The removal of prisoners confined beyond the limits of the appellate jurisdiction of the High Court can be effected in the manner laid down in section 40 by the High Court. (*B.P. Regulations, Vol. V. Rule 109*).

During the local verification of a confession the Magistrate deputed to verify it shall be responsible for the safe custody of the prisoner and shall have sole charge of him, but the latter shall on no account be put in a Thana lock-up. No Police Officer of any rank shall have access to him except with the written permission of the verifying Magistrate and in his presence, and record shall be kept of all such interviews permitted. Ordinarily such permission should not be given to any Police Officer directly connected with the investigation.

The prisoner shall be guarded by peons arranged for by the verifying Magistrate, when such arrangements are considered sufficient to prevent the escape of, or any attack on, the prisoner. When the custody of poens is considered insufficient, the verifying Magistrate should apply to the District Magistrate for a guard from the Armed Police Reserve, but the men of this guard shall be forbidden to hold any communication with the investigating police or to converse with the prisoner, the personal wants of the prisoner being attended to by the

Magistrate's peons under the eyes of the guard *(B.P. Regulations. Vol, V. Rule 105)*.

Institution of gang cases.

It is the desire of Government that where a gang is known to exist, steps should be taken to prosecute the members of the gang so far as possible on individual charges. If, however, it is thought that this procedure will not effectively break up the organization and there appears, after verification of a confesson or otherwise, to be sufficient material for the institution of a gang case, the Supt. of Police will depute an officer of known integrity and experience to follow up the clues obtained. He will subsequently, in consultation with the Government Pleader, draw up a detailed report accompanied by statements based on the different headings as given in the next para and forward it, through the District Magistrate, to the Deputy Inspector-General of Police, Crime, who will sanction the institution of the case if he thinks fit. In cases under sections 400 and 401 Indian Penal Code, controlled by the Intelligence Branch, the report should go to the officer in charge of that branch, and not to the Deputy Inspector-General of Police, Crime.

Points to be proved in gang cases.

Though no exact rules can be prescribed for the investigation of gang cases, as each case has its peculiar features, the following general instructions are laid down for the guidance of Police Officers :—

Evidence on the following points must always be sought for and obtained, if possible :—

(i) Evidence of the existence of a gang for the purpose of committing dacoity, robbery or theft during the time specified in the charges (estab-

lished by proof of facts as contemplated in section 10 of the Evidence Act).

(ii) Evidence of the association of the suspected persons for the purpose of committing dacoities or theft.

(iii) Evidence of relationship by blood or marriage among the members of the gang.

(iv) Evidence in corroboration of the approver's statement on material points as contemplated in section 114 (b) of the Evidence Act, and verified by a Magistrate.

(v) Evidence of confessions of co-accused previously recorded at different times and places, (Vide section 30 and 114 of the Evidence Act). These should be verified by a Magistrate.

(vi) Evidence of specific cases of dacoities and thefts committed by the gang.

(vii) Evidence of the recovery of property stolen in dacoities and thefts, or suspicious property found in possession of the accused.

(viii) Evidence of the simultaneous absence from their homes in batches or singly of known members of the gang coincident with the occurences of dacoities and thefts in the neighbourhood.

(ix) Evidence of any increase or decrease in the number of dacoities or thefts coincident with the presence or absence of the members of the gang.

(x) Evidence of the cessation of dacoities and thefts in the affected area after the arrest of the members.

(xi) Evidence of the habitual commission of dacoities or thefts to be proved by an aggregate of acts.

(xii) Evidence of changes of residence to avoid suspicion.

(xiii) Proof of previous convictions for dacoities and

thefts (the former alone can be proved in a case under section 400, Indian Penal Code, but convictions under sections 379,380 and 457 etc. can be proved on a charge under sections 400 or 401, I.P.C., to establish the habits of individuals or the association of the members).

(xiv) Proof of orders under section 110 (a), (b), (c), Criminal Procedure Code, requiring any of the accused persons to give security for his good behaviour, to prove that the person is a habitual thief.

(xv) Proof of orders for security for good behaviour, when two or more of the accused have been bound over in one proceeding under section 110 (a), (b), (c), Criminal Procedure Code, as evidence of association.

(xvi) Documentary evidence in the shape of relevant entries in enquiry slips, in the surveillance register, the village-crime note books, and other registers which are required by order of the Inspector-General of Police to be maintained at a Police Station. This evidence would probably be admissible under section 35 of the Evidence Act, but, if not, might be used under section 159 of that Act to refresh memory. (*B.P. Regulations, Vol. V. Rule 81*).

Tender of Pardon to Approver.

If, after the verification of the confession and on a consideration of the facts and circumstances, the confession appears to be a true one and the case is one under section 400 I.P.C., it will rest with the District Magistrate or the Magistrate who is enquiring into the case (if he is not a Magistrate of the

first class, the sanction of a District Magistrate must be obtained) to tender to the accused a pardon under section 337 Criminal Procedure Code,and make him a Crown witness. If he is already undergoing imprisonment, he should be produced from jail to give evidence in Court. But if he is not undergoing imprisonment he shall, if not released on bail, be detained in custody until the termination of the trial.

Where the offence charged is under section 401 I.P.C., which is not exclusively triable by the Court of Sessions, no tender of pardon can be made nor should any undertaking not to prosecute be given (*B. P. Regulations Vol. V. Rule* 110,111).

CHAPTER IV.

CRIMINAL BREACH OF TRUST.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure :—Cognizable,—Warrant,—Not Bailable,—Not compoundable, Triable by Court of Sessions,—Presidency Magistrate or Magistrate of the first or second class.

Comment.

Scope :—Criminal breach of trust may be considered as a specific case of the offence of criminal misappropriation committed by a person in the position of a trustee or in whom con-

fidence is placed as to the custody or management of the property in respect of which the breach of trust is committed. It is not however coincident in all respects with criminal misappropriation as it is not only a dishonest appropriation or conversion to one's own use but also dishonest disposal of the property in violation of the arrangement under which its possession is transferred to the offender. The way in which the property comes into the possession of the offender will determine the nature of the offence. If the possession is acquired by some casualty it is criminal misappropriation, whereas it is criminal breach of trust where the accused is lawfully and expressly given possession of the property by one who has a right to give it.

Entrusted :—The first ingredient of the offence is that there should exist a 'Trust'. A trust is defined as an "obligation annexed to the ownership of property, and arising out of confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner" (Indian Trusts Act, section 3). "The terms used in the section are wide enough to include trustees of every kind ; that is, those who are such, not only by reason of some employment for which they receive remuneration, but by reason of some trust constituted by express deed, or even by mere implication of law, though the office may be gratuitous." (*Nobin Chandra Sarkar, 12 W. R. 39*). It also includes those whose position is analogous to that of trustees or who, by implication or conduct, make themselves responsible for the disposal of property in a particular way. Such would, for instance, be the case of a partner who dishonestly uses the partnership property in violation of the agreement with his co-partners (*Debi Prosad Bhagat, Vrs. Nagur Mull, 35 Cal. 1108*). The obligation to apply the property in a certain way may arise from any express direction of law, by legal implication, from express

or implied contract, or from the command of a master to a servant. It may also arise from the ordinary course of business in which the accused is employed, and his knowledge acquired therefrom of the purpose for which particular sums of money are entrusted to him (*Lalit Mohan, Vrs. Emperor*, 22 *Cal* .313)

A stake-holder who misappropriates the stakes deposited with him for a wager commits an offence under this section (*Nga Te*, 2 *L B. R.* 216).

The section does not require that the trust should be in furtherance of any lawful object. Where the accused misappropriated property entrusted to him by the complainant to prevent it from being taken in execution of a decree, it was held that he was guilty under this section (*Chinua Karuppa Muppan*, *I Wei.* 463).

Where there is no trust, as in the case of a person who takes money by way of loan or in the case of a contractor who takes money for building purposes, there is no offence under this section. But a servant who obtains money by false pretences from his master for using it in a particular way may be guilty of criminal breach of trust if he dishonestly uses the money in any other way. The relation between banker and customer is that of debtor and creditor and he can not be convicted of criminal breach of trust if he dishonestly withholds payment (*Raushan Rai*, *P. R.* no. 32). The case is however different where the banker becomes a trustee by entering into an express contract to keep a certain fund intact and distinct from his other capital.

The offence of criminal breach of trust is not committed where possession of the property is not absolutely transferred to the accused. A lady wishing to get a railway ticket and finding a crowd near the pay-place asked the accused, who was nearer the pay-place, to get a ticket for her and gave him a sovereign. The accused immediately ran away with the money.

He was held to be guilty of theft (*George Thompson*, 32 *L. J* (*M. C.*). Similarly an offence of criminal breach of trust can not be committed where there is no trust. Where the accused was employed by the prosecutor merely to register orders for goods and receive payments made for goods so supplied, and had no orders to deliver the goods, the delivery by him of two articles, entering up only one as delivered and paid for and misappropriating the price of the other, was held to be theft and not criminal breach of trust (*Wilson*, 9 *C.* & *P.*, 27).

Property :—The property referred to in this section must be moveable property. The accused was entrusted with the dominion over certain plots of land and it was his duty to see that the plots were cultivated with indigo, but he knowingly allowed them to be cultivated with other crop. It was held that the accused was not guilty under this section (*Judgown Sinha*, 23 *Cal*, 372). The property in respect of which criminal breach of trust can be committed must be either the property of some person other than the person accused, or that the beneficial interest in, or ownership of, it must be in some other person and the offender must hold such property on trust for such other person or in some way for his benefit (*Po Seix*, 6 *L. B. R.* 62). The value of the property is immaterial except so far as section 95 I. P. C. is concerned. A cancelled cheque is property within the meaning of this section. (*Mowla Baksh*, 27 *All* 28).

Dominion :—There is some difference between 'Trust' and 'Dominion over property.' A person entrusted with a property possesses certain rights of apparent ownership, and so long as he observes the conditions of the trust he is at liberty to use the property in any way he chooses. A person entrusted with any dominion over property has not exactly the same right over it, and the dominion may be limited to certain conditions

under which the property may be used. There may be instances in which the dominion may be unlimited and of a somewhat permanent nature, but still it falls short of that amount of authority over the property which a trust ordinarily creates. Where a Municipal Water Works Inspector, whose duty it was to supervise and check distribution of water, misappropriated such water for his own use or for the use of his tenants without paying any tax for it or giving information to his employers, he was held guilty of criminal breach of trust (*Bimala Charan Roy*, 35 *All.* 361). If a mortgager in possession who is entrusted with the dominion over the mortgaged property by the mortgagee, wilfully defaults and causes the property to be sold for arrears of revenue for the purpose of defrauding the mortgagee and purchases it *benami*, he is guilty of criminal breach of trust (*Ram Manik Saha, Vrs. Brindaban Chunder Potdar*, 5 *W.R. Civ.* 230). Similarly, a person who pledges what is pledged to him is guilty of this offence. (*Vadivaloo Chetty Vrs. Abdul Razak* 14 *Bur. L.R.* 286). Where the accused was entrusted with a pair of ear-rings for the purpose of raising Rs. 7/- only upon them for the complainant's use, but he pledged them for a larger sum and gave Rs. 7 to the complainant appropriating the remaining money to his own use, he was held guilty under this section (*Guru Mahanty Applasamy*, *1 weir*, 464), A partner is guilty under this section if he dishonestly misappropriates partnership property with which, or with a dominion over which he was entrusted (*Laloo Ghella*, 6 *Bom. L.R.* 553).

Dishonestly uses :—The word "use" may mean a temporary employment or a permanent appropriation, but the use itself would not impose any criminal liability unless it is attended with dishonesty, i.e. wrongful gain or wrongful loss Where therefore a washerman wore the clothes of the complainant and lent them to a man of low caste to wear, so that it was thereby

rendered useless to the complainant, it was held that the act did not constitute such dishonest use as would make it punishable under this section (*Weir*, *269*). Similar is the case of a person who keeps with himself some furniture of another person for safe custody and uses them : it would however be dishonest use within the meaning of this section if he pledges or lends it on hire to another.

No criminal breach of trust is committed if the accused acts under cover of a disputed claim (*Raj Kishore Patter Vrs. Joy Krishna Sen*, *28 Cal 362*), or admits the appropriation in rendering his account alleging a right in himself, no matter how unfounded, or setting up an excuse, no matter how frivolous (*John Norman*, *Car & M. 501*). Bare refusal by the accused to allow the removal of a box left in his house by the complainant, unless some debt due to him by the complainant was paid, was held not to be an offence under this section (*Adinarayan Iyer*, *17 M.L.J.R. 413*).

Violation of Direction of Law or Contract :—Using another's property entrusted to the accused is punishable under this section when such user causes appreciable loss to the owner of the property or gain to the accused. The Madras High Court has however held that in order to constitute such wrongful gain or loss as is contemplated in this section the property must be lost to the owner or the owner must be wrongfully kept out of it. Slight deterioration of an article by use is not enough to establish an offence of breach of trust (*3 M.H.C.App. 6*). An offence under this section was held to have been committed where the accused were entrusted with silver for making ornaments and they introduced copper into the ornaments (*Babaji Bhan*, *4 B.H.C.* (*Cr. C*) *16*). Similarly, where a Magistrate made over a pony, which had been condemned by the Municipality as unfit for work, to the accused who professed to be the Secretary of a society for the maintenance of incurable

animals and agreed to take charge of the pony, but subsequently sold it to an *ekka* driver, it was held that this offence was committed (*Gouri Shankar, 14 A.W.N. 197*). The servant of a liquor contractor was entrusted with liquor to sell, the arrangement with his employer being that he would receive a certain proportion himself and render account for the remainder, and that he would not adulterate the liquor. The servant mixed water with the liquor and sold it at the same rate as the unadulterated liquor keeping the profit to himself. It was held that he committed criminal breach of trust (*Jamsetji, Cr.*R. *no. 53 of 1888*). Failure on the part of the accused to account for money which he receives on behalf of another person and which he is bound to account for is an offence under this section although no precise time can be fixed at which his duty it was to pay over the money (*Welch, 1 Den. 199*). Where the accused has received various sums of money prior to the time of being called upon to account for them, and does not so account, he can be charged in respect of the total deficiency at the time of the accounting in one charge, and there is no necessity of putting each sum misappropriated in a separate charge (*Reg. V. Balls L.R. 1 C.C. 328*). A man might be convicted on proof of a general deficiency in his accounts and it is not necessary to prove the receipt and non-accounting of particular items (*Lamberi, 2 Cox, 309*). It is not necessary to show any actual expenditure by the accused of the money misappropriated. Mental appropriation is quite enough to establish the charge, but it should be proved by some overt and visible act ; actual expenditure of the money is not however the only proof of it (*Kesho Ram P.R. no : 36 of 1889*). Mere retention of money does not necessarily raise a presumption of dishonest misappropriation to one's own use, but dishonest misappropriation may some times be inferred from the circumstances without direct evidence (*Nga Tha Zan U.B.R.* (*P.C.*) *19*). The mere fact

that the accused did not at once apply the money to the purpose for which it was intended does not amount to criminal breach of trust. It must be shown that the money was disposed of in some way other than that in which the accused was bound to apply it, and that it caused wrongful gain or loss (*Nga Hmu, 1 U.B.R. 345*).

Evidence :—Where the accused pleads that he made over the money to the proper person, the onus does not lie on him to prove payment, but on the prosecution to prove non-payment (*Hari Dagdu Cr. R. no : 47 of 1896*). In a case of embezzlement, when the charge is in respect of misappropriation of certain sums, evidence may be given of the embezzlement of other sums not included in the charge for rebutting the accused's plea that the sums included in the charge were subjects of a mistake in the keeping of the accounts (*Richardson, 8 Cox 448*). An agreement between the complainant and the accused that the money embezzled shall be refunded can not be pleaded in bar of the prosecution (*Ramasami Nadan, Weir, 465*).

Charge :—When the accused is charged with criminal breach of trust or dishonest misappropriation of money it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234, provided that the time included between the first and the last of such dates shall not exceed one year. (*Section 222 (2) Criminal Pro. Code*). Where an accused person is charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money, the whole sum being alleged to have been wrongfully dealt with by the accused within a period not excee-

ding one year, the mere fact that the items composing such aggregate sum are specified and may be more than three in number will not render the charge obnoxious to the prohibition implied by section 234 of the Code of Criminal Procedure (*Gulzari Lal 24 All. 254*). Where a charge of criminal misappropriation had three counts, each specifying the money alleged to have been misappropriated by the accused on a particular day, but in two out of the three cases the total sum consisted of three different items, it was held that a charge so framed did not offend against section 234 of the Criminal Pro. Code (*Ishtiaq Ahmed, 27 All. 69*).

407. Whoever, being entrusted with property as a carrier, wharfinger, or ware-house-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not Bailable,—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

Comment.

Scope :—This section provides enhanced punishment for breach of trust committed by persons in the position of bailees. The property entrusted must be moveable. The employment of the persons mentioned in this section is not continuous but intermittent and is in relation to specified articles

Carrier :—A carrier is a person who undertakes to transport for hire property from one place to another for all

persons indiscriminately. A carrier is liable under this section if he is bound, by the nature of the undertaking, to deliver to another person *named* the goods *in specie*. If he is at liberty to convert the goods before delivery he ceases to be a carrier within the meaning of this section. Railway companies are carriers (see Indian Railways Act, sections 72-82). A carter who is merely hired to carry the goods but is not entrusted with its custody (as in the case of carts carrying treasure under police escort) cannot be convicted under this section as a carrier.

Wharfinger :—A wharfinger is the keeper of a wharf, which is "a structure or platform of timber, masonry, iron, earth or other material built on the shore of a harbour, river, canal or the like, and usually extending from the shore to deep water, so that vessels may lie close together to receive and discharge cargo, passengers and the like (*Webster*)". A wharf is also called a quay or pier. The keeper of the wharf usually charges a due which is called wharfage.

Ware-House-Keeper :—A warehouse is a house to keep "Wares" i. e. goods, merchandise or commodities. It is ordinarily called a godown in this country.

408. Whoever, being a clerk or a servant, or employed as a clerk or a servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 406.

Comment.

Clerk or Servant —See section 381.

The property must have been entrusted to the accused in his capacity of clerk or servant, otherwise he is guilty under section 406. A person is guilty under section 408 so long as he is actually working as a clerk or servant, even if there is no contract binding him (*Foulkes, L. R. 2 C. C. R. 150*). A servant is all the same responsible even when the masters had no right to the money and were wrong-doers in receiving it (*Richard Beacall, 1 C & P 454*). A Gomasta of the complainant who received money for a specific purpose (purchasing wood) but did not use it for that purpose, and, on being called on to account for the money, falsely stated that he had purchased wood while actually no wood was purchased, was held guilty under this section (*Watson V. Golab Khan, 10 W. R. 28*). In this case the accused was held liable as there was a specific direction establishing the trust, but if there had been no such specific direction in respect of the particular money and he had been in general charge of rent collection, he would not have been guilty under this section if he had failed to purchase wood according to his employer's direction and made the false statement as above unless there was evidence of defalcation in the general balance. Where a Court Inspector improperly delegated to a Constable his own duty of receiving and paying Government money, taking from the Constable private security to save himself from loss in case of defalcation, and the Constable misappropriated the money, it was held that he was guilty under section 408 and not 409 as the money was not entrusted to him in his capacity as a public servant. He was however held to be a "servant" within the meaning of this section as the Court Inspector employed him under a special trust (*Benee Madhav Ghose, 8. W. R. I.*) (This case has been

modified by *Ram Dhon Dey, 13 W. R. 77*, in which a conviction under section 409 was maintained).

It is criminal breach of trust if the entrusted property is used by the accused for the benefit of another person, thereby causing wrongful gain to that person though there is no corresponding wrongful loss to the owner of the property. The complainant entrusted the accused with some blocks of wood engraving to print his (complainant's) catalogue, and the accused used the blocks to print a rival firm's catalogue. He was held guilty under this section as there was a violation of an implied contract and it caused wrongful gain,—also wrongful loss to some extent as the blocks deteriorated in value (*Keshab Chander Boral V. Nityananda Biswas, 6 C. W. N. 203*).

What is entrusted to the accused must be *property*. Where the accused, a servant, was ordered by his employers to take some bags of paper to the yard and there to destroy them, and the servant carried the papers away to another place, it was held that he was not guilty under this section (*Priyanath Chakrabarty, 29 Cal 489*).

Actual conversion need not be proved :—A servant who enters in his master's books a smaller sum of money than what he receives and ultimately accouts to his master for the smaller sum, though in paying this amount to the master together with other amounts received during the day he pays every piece of money received at the time of making the false entry, he is guilty of embezzling the difference at the time of making the entry (*John Hall, 11 R&R 463*).

Evidence :—Mental act of fraudulent appropriation may be inferred from the conduct of the accused (*Kesho Ram, P.R. No 36 of 1889*). Excessive delay in remitting collections was held to be dishonest misappropriation (*1 Weir 464*).

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure. The same as section 406.

Comment.

Public Servant :—See section 21. The term "public servant" includes any person, whether receiving pay or not, who chooses to take upon himself the duties and responsibilities belonging to the position of a public servant and is recognized as filling the position of a public servant.

The following are public servants :—

Convict-warders (*Kallachand Moitree*, 7 *W. R.* 99); officers of the Society for the Prevention of Cruelty to Animals (*Upendra Kumar Ghose*, 7 *C. L. J.* 475); persons appointed by Government Solicitors to conduct prosecutions (*Butto Kristo Das*, 3 *Cal*, 497); a Patwaree (*Mudsoodun*, 2 *N. W. P.* 148); a supernumerary peon of the Collector's court who was remunerated by fees (*Ram Krishna Das*, 7 *B. L. R.* 446); a Sanitary Inspector within the meaning of the Local Board Act (*Tiruvengada Mudali*, 21 *Mad.* 428); a manager of an estate employed under the Court of Wards is a public servant according to the Allahabad High Court (*Mathura Prashad*, 21 *Allahabad*, 127) but not according to the Calcutta

High Court (*Nazamuddin, 28 Cal. 344*). For the purposes of the Indian Penal Code some officers have been declared as public servants by the local or special Acts under which the offices have been constituted. They are designated as Statutory Public Servants, e. g. Police Act, section 8.

The following are not public servants :—

A Podaar of the Bank of Bengal (*Madan Mohan, 4 Cal. 396*) ; a peon employed by the Manager of an estate under the charge of the Court of Wards (*Arayi, 7 Mad. 17*) ; an arbitrator appointed by the parties to a proceeding under section 145 Criminal Procedure Code (*Sunder Manjhi, 30 Cal. 1084*) ; a carter employed by Government (*Nachimuttu, 7 Mad. 18*) ; a Sub-Registrar's clerk paid out of allowance given to the former (*Bhagwati Sahai, 32 Cal. 664*) ; a Municipal water-tax collector (*Gulab, 1 A.L.J. 125*) ; a police officer under suspension (*Dinanath Ganguly, 8 B.L.R. App. 88*).

Capacity of a public servant :—"In order to bring a case within this section it is necessary to show that the property was entrusted to a public servant and that he accepted the property entrusted, being in his public capacity required or authorised to accept it. It is not enough to show that a person delivered the property to him because he was a public servant." It is not necessary that the property should be that of Government ; one is guilty under this section if he is entrusted with *any* property *in his capacity as a public servant* (*Ram Sundar Poddar, 2 C.L.R. 515*).

Banker :—The word 'Banker' includes a cashier or shroff (*Hira Lal, P.R. no. 19 of 1908*).

Merchant :—Every one who buys and sells is not a merchant. Broadly speaking the term means "those who traffic in the way of commerce by importation or exportation or carry

on business by way of emption, vendition, barter, permutation or exchange" (Jacob's Law Dictionary).

Factor :—is an "agent employed to sell goods or merchandise, consigned or delivered to him by or for his principal, for compensation commonly called factorage or commission" (*Wharton*).

Broker :— is an agent who arranges binding contract between two parties. A factor is entrusted with the possession of property and its disposal, but a broker only arranges the contract about it without being put in possession.

Attorney :—is "one who is appointed by another to do something in his absence and who has authority to act in the place and turn of him by whom he is delegated" (*Wharton*).

Agent:—An agent is a person employed to do any act for another, or to represent another, in dealings with third persons (*Indian Contract Act, section 182*).

CASES.

The accused, a pound mohurrir, levied Rs. 5/- for five buffaloes and gave receipt for only Rs. 4/- to the owner and entered Rs. 4/- in his accounts which was subsequently altered to Rs. 5/- as the payee complained of the overcharge before the accused sent the money into the Treasury. Held that he was guilty of an attempt to commit this offence (*Bhulu, B.U.C. 632*). A record-room clerk made over a part of a record to a person who was entitled to a copy of the document but would otherwise have had to pay for the copy. He was held guilty under this section. (*Gangaprosad, 27 All. 260*). A traveller putting up at a Serai, and believing himself to be dying, made over his property to a Police Constable for protection. It was held that the constable was entrusted with the property in his public capacity as he was empowered under

section 95 Criminal Procedure Code to receive the property to prevent the commission of an offence, i. e. theft, by other persons (*Bhag Singh, P. R. no.* 24). The accused, a petty officer in the Salt Department, was empowered to sell salt at reduced prices to fish-curers. He bought some salt at this reduced rate for himself and showed it in the account books as sold to fish-curers. He was held guilty under this section (*Balayya, 1 Weir, 467*). Where the directors of a bank paid the dividends out of the deposits, when there were no profits, thereby causing gain to persons to which they were not entitled and wrongful loss to depositors, they were held guilty under this section (*Moss, 16 All. 88*). Where a trustee or a manager of a temple misappropriated temple jewels, he was held guilty of criminal breach of trust and not of theft (*Muthusamy Pillai, 1 Weir. 433*). Where a village shroff, whose duty it was to assist in collecting the public revenue, received grains from ryots and gave receipts, as if for money received by virtue of a private arrangement, it was held that he was not guilty of this offence as he was not authorized to receive the public revenue in kind and the party who delivered the grain did not thereby discharge himself from liability from the revenue (*4 M. H. C. App.* 32).

Burden of Proof :—In a case of criminal breach of trust it is not necessary to prove the actual mode of misappropriation. When the prosecution proves that the accused was bound to return the money and he did not return it, it is for the accused to prove his defence (*Kadir Baksh, 8 A. L. J. R. 88*).

CHAPTER V.

RECEIVING STOLEN PROPERTY.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed, is designated as "stolen property" whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Comment.

The receipt or retention must take place within British India, unless the person receiving or retaining out of British India is a British subject *(See section 188 Criminal Procedure Code)* Where there is a dishonest retention in British India of property stolen elsewhere, it is no defence by the accused, being a foreign subject, that the property was stolen by himself, he not being liable to be tried, convicted, or punished by the British Court for the theft *(Jafar Ali, P. R no. 30 of 1894)*.

Possession :—The word "possession" has been used in this section in its broadest sense and includes custody or control, whether temporary or permanent, or exclusive or joint with the thief, nor is manual possession necessary *(Smith*, Dears, C. C. 494).

Property coming into the possession of owner :—

If the owner somehow resumes possession of the stolen property before it passes on to the receiver, it ceases to be stolen property, and such a receiver can not be convicted even if he has received it knowing it to have been stolen (*Villensky*, 2 *Q. B.* 597). The case is similar where the property is restored to the owner and he gives it back to the thief to enable him to sell it to a third person (*Thomas Dalan*, 6 *Cox.* 449). If a person buys, in good faith, property which has been stolen he does not acquire any ownership therein (*Section* 108, *Indian Contract Act*), and so another person receiving from him with guilty knowledge is liable under section 411.

Property into or for which the stolen property has been converted or exchanged is not stolen property (*Subha Chand, P. R. no*: 39 *of* 1881), such as an ingot obtained by melting stolen jewellery.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate, or Magistrate of the first or second class,—Triable summarily if the property is not worth more than Rs 50.

The thief and the receiver can not be tried together (1 C. W. N. 35). Different persons, retaining separately different articles of stolen property, though proceeds of the same theft, cannot be tried together (*Abdul Majid*, 10 *C. W. N.* 912).

Venue :—A charge of receiving or retaining stolen goods

may be enquired into or tried either by the Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained. Where a Nepalese subject, having stolen cattle in Nepal,brought them into British territory, it was held that he could be convicted of guilty retaining (*Sanker Gope, 6 Cal. 307*).

Comment.

Dishonestly :—See page 68.

Receives or retains :—Dishonest reception is different from dishonest retention. In the case of reception the dishonesty is contemporaneous with the act of acquisition of possession, while in the case of retention dishonesty supervenes after an honest acquisition of possession. An illustration of such a retention is the case of a pawn-broker who receives some property in pledge honestly, but subsequently discovering it to be stolen property continues to retain it in his possession for his own benefit. A person can not be convicted of *receiving* if he had no guilty knowledge at the time of receipt. In order to support a conviction of dishonestly *retaining* stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly (*Khona, P.R. no : 31 of 1879*). A person who has stolen the property or dishonestly misappropriated it can not be guilty of retaining it (*Shwe Thi, 3 L.B.R. 254*).

The use of the alternative expressions "receives or retains" relieves the prosecution of proving the one as distinct from the other. It is enough to prove facts which lead to the inference that the accused either acquired possession of the property dishonestly, or having honestly acquired it retained it dishonestly.

Possession :—Actual manual possession of the stolen property by the accused is not necessary. Stolen property was brought by the thief into A's shop. A, knowing the property to be stolen, ordered her servant to take the goods to the pawn office and "pawn there for the girl" (the thief). The servant did so and brought the money which she handed to the thief in her mistress's presence. This was held to be dishonest receiving by A (*Miller*, 6 Cox. 353). Where the consignee presented a railway receipt for certain stolen goods to the Station Master, paid the freight and received formal delivery of the package from the latter, it was held that he was guilty of receiving though he had not removed the goods from the station where they were lying (*Shewadhhur Sukul, 40 Cal. 990*). But it must be proved that the accused exercised some sort of dominion over the property ; the offence is not complete when he is caught in the act of bargaining, the exclusive possession still remaining in the thief (*John Wiley*, 4 Cox. 412). Also an actual taking into some kind of possession is necessary. *A* sent a parcel containing stolen property to a certain place by coach. The parcel was not addressed to any one, but there was a verbal direction from *A* that a person would call for the parcel at that place. *B* enquired for the parcel which was shown to her and she claimed it, but it was not delivered to her. Held that *B* could not be convicted as a receiver (*Catherine Hill, 18 L.J. (M.C.) 199*).

The possession of the stolen property should be clearly traced to the accused ; if it is simply found in his house it should be seen whether it could not have been placed there without his knowledge or sanction by some other person residing in the same house (*Emperor V. Malhari, 6 Bom. 731*). This knowledge or sanction need not be directly proved but may be inferred from surrounding circumstances. Where the only evidence was that the accused pointed out a place in the field of

another person where stolen property was concealed, it was held that this was not sufficient to establish a charge under this section (*Gobinda, 17 All. 567*).

Joint possession :—A person having a joint possession with the thief may be convicted as a receiver (*Thomas Smith 24 L.J.* (*M.C.*) *135*). If stolen property is found in a house occupied by a Hindu joint family and if knowledge of the presence of the property is proved against the managing member, he must be presumed to be in possession of it (*Budh Lall 29, All 598*). Mere discovery of property in a house which is in the possession of more than one person is not in itself sufficient to prove that the property was in the possession of *any* of those persons (*Mahammad Ali Shet, 19 M.L.J. R. 301*). The bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction (*Nirmal Das, 22 All. 445*).

Husband and wife :—A wife can not receive from her husband nor can she, under the English Law, be convicted of receiving jointly with him, because she is supposed to be under his marital influence, but if she takes an active and independent part in receiving stolen goods in the absence of, or apart from, her husband, and from a person other than him, she may be convicted of receiving (*Reg. V. Brooks*, I Dears and B. 184 ; *Reg. V. Wardroper*, Bell, C.C. 249). A husband may however receive from his wife (*M'Athey*, 9 Cox. 251). A husband and a wife were jointly indicted for receiving stolen goods ; there was evidence that the wife received a portion of the stolen property from one of the thieves, but there was no evidence that the husband was present at the time of the receiving or that she was acting under his compulsion. It was held that she was guilty of receiving stolen goods (*Mary Baines*, 19 Cox, 524). A

wife can not be held guilty where the only evidence is that the property was found in a house where she lived with her husband, and the evidence pointed to the possession of the husband rather than to that of the wife (*De Silva, 5 N. W.P. 120*).

Guilty knowledge :—It must be proved that the accused knew, or had reason to believe, that the property was stolen property. Mere suspicion is not enough (*Kanniappa Naicker M.W.N. 696*). It is not sufficient to show that the accused was careless or did not make sufficient enquiries. Where the property is not actually stolen property, but is erroneously believed to be so by the accused at the time of receiving it, he is not guilty under this section (*Issup, Cr. R. 41 of 1888*). Mere possession of articles alleged to be stolen which are not of an unusual character but are such as easily pass from hand to hand is not enough to establish an offence under this section (*Ravaji, Cr. R. 13 of 1892*). For presumption of guilty knowledge in respect of such property see page 88.

A receiver may be guilty though the principal is not, as, for instance, where the theft is committed by a child who is discharged in accordance with the provisions of section 83 I.P.C. (*Begarayi Krishna Saranu, 6 Mad. 373*).

Where the accused received a bull which had been let loose as a part of a religious ceremony and was therefore the property of no one, he was held to have committed no offence under section 411 (*Bandhu, 8 All. 51*).

Proof.

I. **A theft etc. of the property** alleged to have been received must be first proved (*Reg. V. Buldeo, 2 N. W. R. 187*). The charge should state that the articles found in the possession of the accused were the property of a certain person (*Sidhu Balnath, 1 B. H. C. 95*).

The principal offender is a competent witness, but a plea of guilt by the thief is no evidence of theft as against the receiver (*Emp. V. Bala Patel*, 5 Bom. 63). It is competent to the accused to disprove the guilt of the principal (*Fost, 365*).

The goods received must be the same which were stolen, and not something for or into which they have been sold or exchanged (*Subha Chand P. R. no 39 of 1881*). It must be proved that the accused received the very property stolen and *not property like it* (*Bava Chela, Cr. R. of 1886*). There can be no conviction if it is manifestly impossible to identify the property alleged to be received (*Lal*, P. L. R. no. 194 of 1912). (For presumption of guilty knowledge in respect of unidentifiable articles see page 88.)

II. That the accused received or retained such property :—It should be proved that some person other than the accused had possession of the property before the accused got it. Where property indentified to be the property of one person is found in the possession of another, it is for the latter to account for the possession, and unless he can do so, the Court may fairly infer guilty knowledge (*Hari Ramji, 9 Bom L. R. 27*). But where the property is proved to have been stolen and the date of the theft is recent, it is reasonable to presume that the person in whose possession the property is found obtained it by stealing (*Sami*, 13 Mad. 426). The question of what is or what is not recent possession is to be considered with reference to the nature of the article stolen (*Ina Sekh, 11 Cal. 160*). Whether a presumption of theft or of receipt of stolen property should be drawn would depend on the circumstances, the length of time that has elapsed after the theft, how much of the stolen property is found in the possession of the accused, the circumstances which led to the recovery, and other facts connected with the finding of the property (*Gorle Kandungadu,*

M. W N. 97). Where it appeared that the accused was in recent possession of some stolen sheep, and he could not give satisfactory account of the possession, he was held quilty of receiving, there being no reasonable inference from the circumstances that he stole them himself (*James Langmead*, 9 Cox, 464). Where the accused was found in possession of stolen property two months after the theft and denied possession of the property, he was held guilty of receiving (*Madappa Tevan* I Weir 471). If the possession is not recent the accused should not be called upon to explain how he got the property, e. g., the case of an accused who was found in possession of a stolen horse six months after it was lost (*Cooper*, 3 C & K 318, see also *Ram Chandra Saha V. Abdullah*, 17 C. W. N. 1129).

The property must be before the identifying witness when the identification is made, otherwise his deposition is no evidence against a person accused of having been in possession of the property (*Mussammat Joomnee, 8 W.R. 16*).

The attention of the jury should be drawn to the necessity of satisfying themselves that the possession of the stolen property is clearly traced to the accused, and, if it be simply found in his house, that it could not have been placed there without his knowledge or sanction by some other person residing in the same house.

III. That he did so dishonestly :—See *T. Burke*, 6 All. 224.

IV. That he knew or had reason to believe that the property was stolen property :—Where no direct evidence is available to prove the receiver's guilty knowledge, it is sufficient if circumstances are proved which must have led persons of ordinary understanding in the situation of the accused person to the conclusion that the property was stolen or otherwise dishonestly obtained. Thus, guilty knowledge may be inferred if it is shown that the accused received large quan-

tities of valuables from a person who had no apparent lawful means of acquiring them, or the property was brought to the accused at untimely hours or under circumstances of evident concealment. It may also be proved that the property was purchased at a price lower than its usual price, or was concealed in places not usually used for the custody of such property, or the marks on it were effaced, or the account given regarding its acquisition was false or inconsistent. Guilty knowledge may also be inferred from the fact that the property was received from a notorious thief or one from whom stolen property had been received on previous occasions. There can be no conviction unless the presumption of guilty knowledge arises from the evidence in the case; mere failure on the part of the accused to account for the possession is not enough for his conviction (*T. Burke, 6 All. 224.*)

A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of these articles, of which he was in possession, to be stolen. (*Illustration* (*a*), *section 114, Evidence Act*).

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transporation for life, or with rigorous imprison-

ment for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions

Comment.

Receives or retains :—The receipt or retention must have taken place in British India so as to give jurisdiction to a British Court. (*Kripal Singh, 9 All. 523*).

Where the prisoner is apprehended soon after the dacoity (8 days) with a portion of the plundered property there is good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form (*Motee Jolaha, 5 W. R. 66*). A more recent possession (within 6 hours of the dacoity) would however raise a presumption that the accused was a participator in the dacoity and not merely a receiver (*Cassy Mul, 3 W.* R. *10*). Separate convictions and sentences under sections 395 and 412 with respect to the same property are improper (*Bahiru, Cr. R. 65 of 1886*).

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Same as section 412.

Comment.

Habitually :—See comment on section 400. A person cannot be said to be an habitual receiver of stolen goods who

may receive the proceeds of a number of different robberies from different thieves on the same day ; it should be shown that property was received on different occasions and on different dates (*Baburam Kansari, 19 Cal. 190*). It is not enough to prove that the articles found in the house of the accused were stolen on different dates.

414. Whoever voluntarily assists in concealing, or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure :—Cognizable,—Warrant,—Not bailable—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first or second class,—Triable summarily if property is not worth more than 50 rupees.

Comment.

Scope :—This section applies when a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property (*Khona*, P. R. No. 31 of 1879) or where there is no actual receipt of the property by the accused (*Subha Chand*, P. R. No. 39 of 1881).

Voluntarily :—See Robbery (section 390).

Disposing of :—This cannot include the restoration of the property to its owner. The accused restored to the owner jewellery stolen by his son and subsequently denied all knowledge of the matter inorder to save his son from punishment ; he was held to have committed on offence (*Nga Yan E*, U. B. R. (P. C.) 8). . Where the accused voluntarily assisted

in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, it was held that he was guilty both under this section and section 193 (fabricating false evidence)—*Rameshwar, 1 All. 379.*

Conceals, makes away with :—Altering the form of an article so as to prevent its recognition (such as melting down ornaments or effacing any mark of identification) may be assisting in its concealment. "Making away with" means putting the property out of the reach of persons who are interested in its recovery,—e. g. swallowing it or setting it on fire.

Knows or has reason to believe :—It must be proved that the accused had definite knowledge that the property was stolen property or there were such circumstances as would make a reasonable man feel convinced that the property with which he was dealing must be stolen property ; it is not enough to show that the accused had reason to *suspect* that the property was stolen or that he was careless and did not make sufficient enquiry to ascertain if the property was honestly acquired. (*Kanniappa Naicker, M. W. N. 696*).

Proof —The prosecution is not bound in all cases to trace the owner of the property. It need only be proved that the accused had known, or had reason to believe, the property as stolen and he voluntarily assisted in concealing or disposing of it (*Budhankhan Inayatkhan, 14 Bom. L. R. 893*). An accused person's merely pointing out the place where some of the stolen property is recovered and his making admission before the Police of having concealed it there, which admission is not admissible in evidence, are not sufficient for convicting him under this section in the absence of any other independent proof connecting him with the commission of the crime. (*Kaka Singh P. W. R. Cr. R. 21 of 1908*).

Charge :—Charges under section 411 and 414 against the same accused should be made alternatively and not cumulatively (*Yeshwant, 10 Bom. L. R. J. 125*), and passing on him separate and consecutive sentences under section 411 and 414 in not permissible. (*Alu Kala, Cr. R. 28 of 1891*).

The same person cannot be convicted both for theft as well as for concealing or disposing of the same property (*Nga Po Kyaw*, S. J. L. B. 334 ; *Zinda*, P. R. No. 15 of 1896). The two offences should be treated as parts of one continuous transaction and not as two distinct offences (*Alu Kala*, Cr. R. 28 of 1891).

It is not necessary to prove dishonesty on the part of the accused. It is enough if it is proved that he did the act voluntarily.

CHAPTER VI.

CHEATING.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or ommission causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation ;—A dishonest concealment of facts is a deception within the meaning of this section.

Comment.

The following are the ingredients of cheating :—

1. Deceiving any person.
2. (*a*) Fraudulently or dishonestly inducing that person
   (i) to deliver any property to any person, or
   (ii) to consent that any person shall retain any property,

or

(b) Intentionally inducing that person
   (i) to do or omit to do anything which he would not do or omit to do if he were not so deceived,

and

(ii) the act or omission causes, or is likely to cause, damage *to that person.* (If the damage is caused to some person other than the person deceived, *e.g*, where a shopkeeper calls to his own shop a customer and represents his shop to be the shop of a rival shop-keeper in which the customer had intended to make purchases, and sells him articles at the prevailing market-rate, it is no cheating (*Sunder Sing P.R. no : 25*).

From the above it will apear that there are separate classes of acts which the person deceived may be intended to do (vide (a) and (b)) in the first of which the inducing must be fraudulent or dishonest while in the second it is only intentional. In all cases there should be deceiving.

Deceiving :—The word "deceiving" means making one believe as true what is not true. It implies a misrepresentation, either by an act or ommission, calculated to induce in another person an erroneous belief as to a matter of fact.

Inorder to constitute an offence of cheating it must be shown that the deception induced the delivery or retention of property or some act or omission as contemplated in the section. The deception must therefore precede such act on the part of the person deceived. Such deception may be by words or conduct (*Ramanath Kalapahar*, 2 *C.L.J.* 524). Even if there is no false pretence by express words it can be inferred from the circumstances (*Khoda Bux*, 32 *Cal.* 941).

There is no cheating if the accused's intention is not fraudulent ; if a demand is only illegal and not fraudulent it does not amount to cheating. Where the accused demanded payment of rent from the complainant who was his tenant and, when the latter paid the rent, the accused refused him to give *dakhilas*

until Rs. 25/- more was paid to make up the sum, the said amount having been deducted towards a *Swadeshi* subscription, it was held that he committed no offence (*Kumeda Charan Ghose, 15 C.L.J. 515*). Where the person intended to be deceived himself knows the falsehood of the pretence but still acts upon it with a view to entrap the accused, it will not amount to cheating as no one is actually deceived. But a man may be guilty of attempt to cheat though the person intended to be deceived knows the falsity of the pretence and never intends to act upon them, for the attempt is complete as soon as the false pretence is made by the accused (*Government of Bengal V. Umesh Chander Mitter*, 16 *Cal 310*).

The fact that the deceived person had the means of detecting the deception is no excuse for the accused, e.g. when the accused presents a 50/- rupees note representing it to be a 100/- rupees note and gets it changed for rupees one hundred. (*See Jessop*, 7 *Cox 399*). The question for decision in every case is whether the misrepresentation did actually deceive the prosecutor and not whether he could, by the exercise of reasonable caution, have detected the deception.

Any person :—It is not necessary that the person to whom the false representation is made should be any *particular* person. It may be a class of persons or the public in general (*9 Cal. 53*).

Fraudulently :—A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise (section 25). The term "defraud" has not been defined in the Penal Code. Sir James Stephen observes, "whenever the words "fraud" or "intent to defraud" or"fraudulently" occur in the definition of a crime two elements at least are essential to the commission of the crime : namely, first, deceit or an intention to deceive, or, in some cases, mere secrecy, and

secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to a risk of possible injury, by means of that deceit or secrecy." Injury does not necessarily mean deprivation of property but infringement of some legal right possessed by the person deceived (*Surendra Ghose, 14 C.W.N. 1076*). An intention to defraud may be proved even if there is no evidence that any particular person was defrauded or might possibly have been defrauded. A general intention to defraud is sufficient to support a conviction (*Dhunum Kazee*, 9 *Cal* 53,60).

In ordinary cases the mere fact of the representation being false to the knowledge of the accused will be sufficient proof that it is made fraudulently or dishonestly unless the circumstances of the case lead to an inference that it was made carelessly or without any criminal intent.

Intentionally induces etc. :—In order to constitute an offence of 'cheating' under this portion of the section it should be proved that(i) there was an incorrect or deceptive statement, (2) that the offender in making that statement intended to induce the person to wbom it was made to act upon the strength of such statement, (3) that such action on the part of the person deceived was induced by such statement of the offender and not by other independent motives, (4) that it caused, or was likely to cause, damage to that person.

It is not necessary that the accused person should have intended to cause the damage or harm ; what the section requires is that he intentionally induced the person deceived to do,or omit to do, a certain act (*Nand Lall, P.R. no. 36 of 1888*) The intention need not be fraudulent or dishonest (*Baburam Rai*, 32 *Cal. 775. 781*).

Likely to cause damage :—*e.g.*, inducing a shopkeeper to make an entry in his account book regarding the payment

of an amount which was not actually paid. This entry is likely to cause harm to the shopkeeper if he brings a suit for non-payment of the amount.

Damage or harm :—There is no cheating if the deception is intended to cause damage to a person other than the person who is deceived, *e.g.* where A, by deception, induces B to make an incorrect statement to C regarding the character of C's son and the same causes C to disinherit his son. The damage or harm must be the necessary consequence of the act done by the deceived person or must be necessarily likely to follow therefrom (*Mojey*, 17 Cal. 606) ; in other words, it should be the proximate and natural result of the act or omission.

It will not amount to cheating if the act of the deceived person does not cause, or is not likely to cause, damage or harm. Where a person attempted to get himself employed in a post by producing a false certificate to the effect that he had passed a certain examination, while in fact the certificate referred to another man bearing the same name, it was held that he could not be convicted under section 419, 511, in the absence of proof that the false representation caused or was likely to cause damage or harm to the officer to whom the representation was made (*Manikam Pillai*, 19 M L. J. R. 271). A similar opinion was held by the Bombay High Court in a case in which the accused applied to the Postal authorities and obtained an appointment in the Postal department, but he had not mentioned in his application that he had been dismissed from Government service (*Kashinath*, Criminal Revision no. 402 of 1909). A different view was however held in the case of *Fazal Din* (Punjab Record, no 1 of 1907) in which the accused was held guilty of attempt to cheat on account of having forwarded with his application the copy of a certificate which was never granted to him.

Dishonest concealment :—A concealment is fraudulent when there is suppression of a material fact which the party concealing it is legally bound to disclose and of which the other party has a legal right to insist that he should be informed; in other words, the suppression should either be a violation of a legal duty or an illegal omission in fact (*Bishan Das*, 27 All. 561). The accused was held guilty of an atempt to cheat where he, with a view to create evidence of payment, despatched to his creditor, the complainant, an envelope insured for rupees 530 but containing two pieces of waste paper (*Arura, P. L. R. no 299 of 1913*).

PUFFING :—Misrepresentations and exaggerations indulged in by sellers and buyers of goods may, if strictly interpreted, be called deception practised for the sake of gain, but it is absurd to class them as indictable. "A simple misrepresentation of the quality of goods is not a false pretence" (*John Bryan*, 7 Cox. 312). There is no cheating unless there is a wilful misstatement as to the *nature* of the goods; in other words, when the thing sold is of an entirely different quality from what it is represented to be, and the statements made are not merely exaggeration or praise but a false representation of an existing fact operating on the mind of the buyer and deceiving him in such a manner that he cannot protect himself against it. The selling of milk and water in about equal proportion as pure milk was held to be cheating (*Nana, Cr. C. 145*).

Inducing to deliver property :—When the delivery of property is in pursuance of a contract, either written or verbal, or an arrangement between the complainant and the accused, there can be no cheating unless it is established that the accused had no intention of performing his part of the contract *when the agreement was made.* If he had such an intention when the contract was made and delivery of the property taken,

but failed afterwards to perform his promise, the case is one of breach of contract and not of cheating. The circumstances of the case will however indicate the existence or absence of such an intention. Where a person hired certain property for use at a wedding, paying a portion of the hire and giving a written promise to pay the balance of the hire and restore the property after the wedding, *he being well aware that there was to be no wedding*, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim, it was held that he was guilty of cheating (*Kadir Bux*, 3 N. W. P. 16). Similar was the case in which the accused absconded after obtaining an advance from the complainant for which he gave a promissory note, representing that he had two boat loads of paddy in the adjoining creek and that he would bring the paddy to the complainant for sale (*Ram Chand V. Jai Dial, P. L. R. no. 114 of 1912*).

Inducing to do or omit to do etc :—The accused, a cooly recruiter, induced the complainant to come to a cooly depot and got him registered by representing to him that he would get a domestic service. He then wrote to a cooly contractor offering the complainant as a cooly and persuaded the latter to go to a railway station and tried to get him enter the train, but the complainant refused to go. It was held that the accused was guilty of atempted cheating (*Kishori Lall Chatterje, 9 C. W. N. 764*) [illegible] re the accused passed off girls of a low c[illegible] er caste and thus obtained money from t[illegible] them (*Komul Das, 2 W. R. 7*); where [illegible] icated syphilis to a man by falsely represe[illegible] had no syphilis (*Rakma, 11 Bom. 59*). [illegible] opium consumer got a license to pur[illegible] his names and another license in the [illegible] thereby obtained more opium than h[illegible] wise (*Tha Byaw, 4 L.B.*

R. 315), it was held that the offence of cheating was committed. Similar was the case in which the accused took delivery of goods purchased and gave the seller as the price thereof some cheques on a bank where he had shortly before opened an account but had drawn out almost the whole amount (*Cosnett 20 Cox. 6*).

Buying and selling :—Where the accused sold liquor in a glass which was not a prescribed measure, but of which the accused misrepresented the capacity to the complainant, it was held that the accused should have been tried for cheating and not under section 265 (*Nooruddin, Cr. R. no. 36 of 1888*). Where a licensed opium vendor sold opium at rates higher than those fixed by Government (*Pandurang Ramchundra, 4 Bom. L.R. 823*) it was held that he was guilty of cheating. A vendor of immoveable property cannot be convicted of cheating when he omits to mention that there was an incumbrance on the property unless there is evidence that he represented the property as unincumbered, or, on being asked by the vendor if the property was incumbered, said it was not (*Bishandass, 27 All. 561*). Where the accused sold, as genuine gold mohurs, silver rupees of the reign of Shahajahan on which a coating of gold had been put, he was held guilty of cheating (*Khusali, 29 All 141*).

It was not cheating where the accused secretly entered an exhibition building without having purchased a ticket It would have been cheating if he had done so by making a false representation to the door keeper that he had a ticket (*Mehervauje Bejanji*, 6 *B.H.C. (Cr. C.) 6*). Where a passenger travelled in a carriage of higher class than he had paid for (*Dayabhai Parjaram, 1 B.H.C. 140*), and where a passenger gave a portion of his luggage to his co-passenger to evade payment of luggage-fare (*Paras Ram*, P.R. no. 25 of 1903) the offence of cheating was not committed. It is however cheating when the accused evades payment of railway fare by the production of an old

pass altered as to date and number of persons (*Gunput*, Unrep. Cr.C. 470).

False accounts :—Where a servant presents false accounts to his employer intending to defraud the employer, he is guilty of attempting to cheat (*Ramajirav Jivbajirab*, *12 B. H.C. 1*).

416. A person is said to "cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation:—The offence is committed whether the individual personated is a real or imaginary person.

Comment

The false personation may be by words, act or conduct, e.g. when a man who is not a police officer wears the uniform of a police officer and realises money from another man on account of fines due from the latter. It will be false personation even if he does not say a single word to the effect that he is a police officer. (See *Barnard*, *7 C & P*, *784*). Where A falsely represented himself as B at a University Examination and answered the questions in B's name, he was held guilty of cheating by personation and forgery (*Appasami*, *12 Mad. 151*).

The word "person" has been used in this section in a rather wide sense as it means not only a separate individual but includes a material misrepresentation regarding the same individual. So where the accused represented to the prosecutor that a girl was a Brahmin whereupon the prosecutor, who was a Brahmin, paid him money on consideration of the

girl's marriage with his brother, it was held that he committed cheating by false personation (*Mahim Chunder Sil, 16 W.R. 43*). A different view was however held by the Chief Court of the Punjab which decided that a false representation as to the caste of a girl so disposed of was not false personation within the meaning of this section (*Singhara, P.L.R. no. 149 of 1903*) and in a case of cheating by such representation the conviction should be under section 420 (*Durga Das, P.R. no. 13 of 1904*).

A mis-statement of facts regarding one's position in life is a false personation (see illustration (*a*)). Such would be the case when one signs a document and puts a particular designation after the signature while he does not actually fill that office (*Joykurn Singh V. Man Patuck, 21 W.R. 41*). Similarly it has been held to be cheating by personation where the accused represented a girl to be the daughter of a certain woman of good family while she was in fact the daughter of another woman. (*Dhunput Ojha, 7 W.R. 51*).

It should be shown that the false personation was used as a means to cheating. There can be no conviction under section 419 if there is no proof of fraudulent or dishonest intention on the part of the accused. Where a woman who had executed a deed fell ill on her way to the Registration Office and requested another woman (who accompanied her) to personate her and admit the deed for registration, it was held that such personation was punishable under the Registration Act and not as cheating by personation (*Loothy Bewa 11 W. R. 24*). The same view was held in a case in which a servant purchased a stamp paper for his master, giving his master's name as if it had been his own (*Keruppanna Pillai*, I Weir, 480).

419. Whoever cheats by personation shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine, or with both.

Procedure :—Cognizable,—Warrant,—Bailable.—Not compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the First or Second class.

Evidence :—The cheating should first be proved and it should then be shown that it was effected in the manner described in section 416. The personation may be of the cheat himself or of some other person utilized by him,and this person may be an innocent agent or he may be guilty. If innocent, his evidence as a witness will go a long way to establish the guilt of the cheat, but if he is guilty he is in the position of an accomplice and his statement requires material corroboration in order that it may go against the accused.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Bailable,—Not compoundable,—Triable by the Court of Session, Presidency Magistrate or Magistrate of the First class.

Comment.

Property :—The word property does not include immoveable property. Where the accused personated a Court poen and proclaimed by beat of drum that a certain person had been

dispossessed from his holding by the Court, it was held that he could not be convicted under this section as it had no application to the delivery of immoveable property. (*Abdul Ahad, 2 A. W.N. 6*). Where delivery of property is taken on a false pretension, or on a promise made by the accused which he knows he cannot or will not fulfil, the offence is complete as soon as the property is taken, and his subsequently returning the property, or a part of it, under pressure will not affect his criminality : in all such cases the state of mind of the accused at the time of taking delivery of the property is what should determine his guilt. (*Debendra Prosad, 36 Cal. 573*). In the absence of evidence of active deception by means of fraudulent misrepresentation, mere suppression of some facts, at the time of borrowing money, concerning a mortgaged property does not amount to cheating (*Hari Kishan, P.W.R. Cr. R. no. 26 of 1910*).

It is not a necessary ingredient of this offence that the person on whom the deception is practised should deliver the property to the man who practises the deception. The offence would be complete if A cheats B and induces him to deliver property to C,—thereby making B suffer wrongful loss though it does not bring any profit to A. The military authorities at Gorakhpur used to obtain market rates from the local Tahsilder's office to enable them to pay for the provisions supplied to them ; the accused, who was an apprentice in the Tehsilder's office and was entrusted with reporting the current rates, reported rates higher than those current in the *bazar* in consequence of which higher rates were paid to the sellers. It was held that he was guilty of cheating (*Parmeshwar Dat, 8 All 201*).

The accused had with him a double pice coated with mercury so that it looked like a rupee. He gave it to A to get it changed. If the circumstances of the case did not make the accused liable to a conviction under section 232 or 241 on the

ground that the idea of using the coin as a rupee was an afterthought, the only offence of which he could be convicted was abetting A to cheat the person to whomsoever A might deliver the coin for change (*Mikarbon, P.R. no. 9 of 1884*).

Valuable security :—The words "valuable security" denote a document which is, or purports tobe, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under a legal liability, or has not a certain legal right. (Section 30).

The term "valuable security" includes all sorts of documents which are securities for value,—whether the same are negotiable or not. It therefore includes such documents as simple bonds and the section (Section 30) does not require that they should be complete, *e.g.* registered, in the case of documents of which registration is compulsory.

Make :—The word "make" signifies that the valuable security should be completed in such a way as to have a legal value, *e.g.* attested and registered where the same are required by law. If the deceived person does not "make" it in the above sense, the offence of cheating is not complete though the accused may be convicted of an attempt to cheat.

Alter :—It means any change in the text of the document, e.g. lowering the price of an article stipulated to be sold. The accused is liable under this section even if the executant does not make the alteration himself so long as it is made with his consent obtained by fraud.

Evidence :—The accused falsely represented himself as the Dewan of a State and obtained money from the complainant as security deposit, pretending that he would secure for him the post of a manager. Evidence of instances of similar but unconnected transactions with other persons, before and after

the date of the offence charged, was admitted under sections 14 and 15 of the Evidence Act, not to prove the *factum* of the offence but to prove that the transaction in issue was one of a systematic series of frauds, and that the intention of the accused on the particular occasion in question was dishonest and fraudulent. *(Debendra Prosad, 36 Cal. 573).*

INVESTIGATION.

1. PROFESSIONAL SWINDLING.

Cases in which professional swindlers are concerned are Special Report cases. Information should therefore be given to the Supdt. of Police by the quickest means available. As in the case of professional drugging, the informant should be asked to give an accurate description of the offender as well as of the route he is known or believed to have taken after committing the offence. The photographs of swindlers published in the Criminal Intelligence Gazette should be immediately consulted and shown to the informant if he had himself seen the offender. Prompt steps should be taken to track the accused, and this should be done even before recording the First Information. Officers and constables sent out for this purpose should be supplied with an accurate description of the offender's features, nationality, dress and age. Telegrams containing such descriptions should be sent to all places, specially railway stations, which the man is likely to visit in course of his retreat, as also to places where he is known or believed to reside or to have associates.

While proceeding to the place of occurrence, the investigating officer should take with himself the photographs of swindlers

available at the police station, as well as the Criminal Intelligence Gazettes containing the reports of similar cases which, if any, had recently occurred. As evidence in these cases consists mainly of identification of the accused, attempt should be made to find out as many persons as can satisfactorily identify him. Enquiry should be made in the neighbourhood to ascertain if there were cases of similar swindling, either preceding or following the one under investigation. These classes of cheats often commit a series of occurrences in the same locality, but the victims do not always come forward to complain.

Different Forms of Professional Swindling.

I. **Doubling trick** :—It is also known as *donakhel* and is practised mostly by Jadua Brahmins (Vide their description in Chapter xi). The other criminal classes who resort to this form of swindling are the following:—Byadhs of Jessore, Nadia, Midnapore and 24 Perganas and Biad Musalmans (itinerant). Doubling tricks are also practised in the following forms :—

(A). *Doubling currency notes* :—The swindler secures the confidence of the dupe by the following process :—he puts a sensitised paper in an ordinary photographer's printing frame and places a genuine currency note over it, and when it is exposed to light the impression of the note appears faintly on the sensitised paper. The sensitised paper is then replaced by a genuine currency note when the dupe is inattentive, or he is made to understand that the process could not be perfect for want of some chemicals which the swindler had not in his possession as they were costly, and is induced to advance money for their purchase. The dupe is anyhow made to believe in the performer's skill and he eventually produces all his currency notes. The cheat ties them in a packet interposing blank papers cut in the size of the notes and, by sleight of hand, substitutes it for a similar packet con-

taining only blank papers which is made over to the dupe with instructions not to open it before a week or so. Sometimes the swindler pretends to place the note in a printing frame which he leaves with the dupe instructing him to pour acids into it or perform some such process. This form of swindling is practised all over the country, and in North Bengal specially by a Mohamedan family living in Rajshahee town, their field of operation being Bogra, Malda and other adjoining districts.

(B). *Doubling banks*:—A form of swindling practised by *Sha Faquirs* who visit villages in large parties and set up something like a *donakhel* bank. They secure the confidence of the villagers by paying back the first depositors double of what they deposit, and when they secure in this way a fairly large collection they disappear with the cash at the earliest opportunity.

(C). *Lost relation trick* :—A form of doubling trick practised specilly by *Jogi Pathans* of Etah and Budaon in the United Provinces. One of the swindlers poses himself as a relation who had gone away to some distant place years ago, and is thus cordially received in the family. After staying there for a few days he will tell one of the inmates that in the course of his travels he has learnt the art of doubling money, and will eventually induce the owner of the house to produce all his valuables for doubling. The usual *donakhel* process is then gone through, the cheat shutting himself as well as the property in a room from which he escapes with the property when the inmates are asleep.

2. **Mystic healers and love doctors** :—These swindlers appear in religious garb and profess to possess the power of healing diseases, curing barrenness in women, impotence in men, or restoring the love between men and women. The dupe is told that some *Pujah* is necessary and ordinary articles

for the *Pujah* are brought, such as Ganges water, betel nut etc. The dupe is then told that it is necessary to place gold near the spot where the *Pujah* is held and the more is the gold the better is the result. He is thus induced to produce all the gold he possesses, or silver if no gold is available, which is tied in a cloth and buried underground. The swindler then disappears with the gold or silver at the earliest opportunity.

3. **Bala tricks** :—Chiefly practised by Muzzaffarpore Sonars (Vide Chapter XI). A *bala* of genuine silver is shown to the dupe and he is allowed to test it, an accomplice of the cheat always helping him to do so. The dupe is then offered it at a low price and what he is eventually induced to take on payment of money is a spurious imitation of it.

A variation of this swindle is *topka* trick which is practised by Punjabees and men of the United Provinces besides local Calcutta swindlers. One of the swindlers travels along a road with the dupe while his confederate, going ahead, stops and picks up a *bala* which he had previously dropped on the road. The dupe's companion shows an eagerness to take it and it is eventually made over to the dupe as security for some money which he borrows from the latter for payment of its price.

4. **Lakshmir Bhar**:—A form of swindling somewhat akin to the treasure trove trick. It is practised specially by the Byadhs (See Chapter XI) and the dupe is induced to accept in exchange for money what is described as *Lakshmir Bhar* (jar of the goddess of wealth), a jar filled with mud with a layer of coins over it.

5. **Treasure trove trick**:—The dupe is made to believe that a large number of gold mohurs were found by some coolies while digging a tank and that they were secretly disposing of the same. A few mohurs are shown to the dupe and offered at a price below their actual value, and he is eventually induced to negotiate for the purchase of the whole lot. The money is

accordingly brought by the dupe to an appointed place after nightfall and he is sometimes given a jar half filled with earth over which is placed a layer of new pice and a few gold mohurs. If the dupe grows suspicious and refuses to accept the jar, he is beaten and robbed of his money.

6. **Swindling by telegraphic message**:—This form of swindling is generally practised in big towns. The cheat makes the acquaintance of a suitable person, gets information from him about the names and circumstances of his relations, and sends one of them a telegram requesting him to remit money by telegraphic moneyorder for an urgent purpose. The delivery is often taken at the Post Office. Another form of this swindling is to wire in the name of a trader to his agent or to another trader requesting him to deliver a certain sum of money to a certain man when he appears to take delivery.

7. **Swindling by forged documents**:—This class of swindling has various forms, the most usual being forging railway receipts and *hundis* or cheques. A consignment is despatched by goods train to a distant place and the railway receipt is then altered in respect of the quantity of the article despatched as well as the freight etc. The consignee's rights are then sold to the dupe, the railway receipt being endorsed to him, and the cheat makes off with the money before the deception is discovered.

8. **Railway ticket swindlers**:—This class of swindlers visit big railway stations and select for their victims parties of simple looking country folk unused to railway travel. They offer them their assistance in purchasing their tickets, and when they receive the money for the purpose, they either disappear with the money or return with tickets for a much shorter journey, perhaps for the first stopping station.

9. **Charity collectors**:—The swindlers pose as *Sadhus*, *Swamis* or *Faquirs*, and collect subscriptions on religious or

charitable pretensions, such as repairing temples or mosques, founding *gosalas* or homes for fallen women, and the like. This form of swindling is specially practised by Bhatras und Kalandars (See Chapter XI).

10. **Swindling by personation** :—The swindlers often pose as public servants. A man with a red pugree personates a *police officer* and arrests a villager who purchases his release by paying money, another in the garb of an *income tax assessor* arranges, on recept of money, to save the dupe from an increase of his tax, a third goes as an *insurance agent* and induces people to effect insurance and pay him the first premium, and so forth. There were recently several cases in Bengal in which a Mohamedan of Tippera visited a number of districts and, representing that his son (a young boy who accompanied him) had been bitten by a dog, obtained money from the district authorities as his travelling expenses for proceeding to Shillong for antirabic treatment. Among this class of swindlers may be mentioned the bogus *employment agencies* who take money from educated young men on plea of finding them suitable employments, also the bogus *marriage agents* who swindle the guardians of unmarried girls as well as bachelors and widowers by offering to find bridegrooms or brides.

II. OTHER KINDS OF CHEATING.

Quite a different class of cases are those in which the accused is known, or may be easily fixed, but the nature of the fraud it is difficult to detect. The investigation of these cases usually presents peculiar difficulties to the investigating officer as a great many of them demand special technical knowledge. For this knowledge there are ordinarily no experts, and even if there are, their opinions will be of little use to the investigating officer unless he has himself a knowledge of the technicalities involved in the question. If one

has deceived another in the delivery of cloth or gold or silver, the investigating officer will find it difficult to proceed unless he knows all about such articles ; if it is a case concerning railway or exchange business, the investigating officer will be unable to grasp the question unless he has carefully studied the methods of the working of a railway or an exchange. Similar difficulties present themselves in the investigation of cases of Breach of Trust involving technical questions. The investigating officer should therefore instruct himself practically on all such questions whenever he finds an opportunity, and the more accurate is his knowledge the sounder will be his conclusions.

Fraud by means of forged or falsified documents — Spurious documents ordinarily used in committing fraud are receipts, bills of lading, passes, letters of authority etc. When such a document comes into the hand of the investigating officer, it should be very carefully scrutinized with a view to detect the peculiarities that would establish the falsity of the document, and when this is done, it will in most cases lead to the discovery of the criminal. Recourse should be had to experts in handwriting, chemists, paper manufacturers, photographers, and such other professional men, but it is always interesting and profitable for the investigating officer to see things with his own eyes. He should always remember that the most expert criminal often commits the greatest blunder and this applies more in the case of forgers than of any other class of criminals. A common blunder of this kind is when the document contains wrong spellings which would not be made by the executant. Dates are also put in the document (such as railway receipt) without it being previously ascertained if the person purporting to write the document was in office on that particular date. It is therefore absolutely necesary to examine very minutely every word and letter of the text of a

suspected document and look for inconsistencies, peculiarities of style, anachronisms, transposition of persons and events and so forth. Even what appear at first sight as mere trifles should not escape the investigating officer's scrutiny. A careful search should be made in the house and working place of the suspected forger. Even when sufficient evidence of the fraud is available, the investigating officer should not neglect to secure additional evidence by discovering, if possible, the instruments and other materials used in framing the forged document which helped the fraud.

Examination of handwriting.

This requires special training and knowledge and the expert should always be consulted. It is at the same time necessary and profitable for the investigating officer to train himself in the preliminaries of the art, so that he can detect broad differences and similarities in hand-writing and decide if experts should be consulted. The observation of different hand-writings is in itself an interesting pursuit. It may be seen in the first place that different people use different forms of letters,—some very old and antiquated, others more modern and common. But this alone is no sure proof that the writer is an old or young person. It may next be seen that writings of persons vary according to their profession, and, with a little training, it is not very difficult to distinguish the writing of a clerk from that of a school master or a medical man. Other internal conditions, such as heredity or imitating one's tutor or any inmate of the family, as well as some physical conditions of the body such as short-sightedness, have a marked influence on the hand-writing. Besides this, certain kinds of illness, snch as paralysis or idiocy, bring about peculiarities in the hand-writing.

While examining a suspected handwriting the investigating

officer should first see if the writer wrote with usual ease and freedom or under some constraint ; in other words, if there was interruption for reflection or comparison. If the writing is examined with a magnifying glass it will be found when the writer dipped his pen in the ink, and if the number of letters between the dips are counted it will be evident if the writing had an even flow or was interrupted. It should further be seen if there were *unusual* interruptions in the words taken singly. If the interruptions cannot otherwise be explained it may be fairly concluded that the writing is a forgery and the interruptions were made only to look at the model and for reflection.

There is another kind of forgery which is effected by tracing. A transparent paper is placed over the writing to be copied and the lines are traced on it with a pencil. The tracing is then pencilled upon the obverse side placed on the paper on which the forgery is to be made, and the lines are retraced with a hard point so that it leaves a faint impression upon the paper which is then developed with ink. It is not very difficult to detect this sort of forgery as the writing does not show the natural glide of the hand, the lines are often broken and clumsy and the flow of the ink uneven. If pencil or carbon guide lines are used they are necessarily removed by rubber, but this process is never perfect and faint remnants of the tracing may be seen if the paper is held under a microscope. It may also show that the erasure has impaired the millfinish of the paper and made the mark of the ink look peculiar at those places.

Comparison of hand writing.

When two handwritings are to be compared, it is a mistake to place them side by side and draw a conclusion from a general observation of them. The better method is to study the characteristics of each writing separately and then to compare

the peculiarities noticed. The two horizontal lines joining the upper and lower extremities of all the letters, as well as the two lines joining the extremities of the loops or tails of such letters as have them, will present characteristic materials for comparison. The vertical distance between any two of these lines should also be taken into account.

Exterior form of forged documents.

When the examination of the contents of the suspected document does not lead to any conclusive result or gives only an insufficient proof, the exterior form of the document should be carefully scrutinized. The investigating officer may not be able to readily obtain the help of an expert and he will often have to come to a prompt conclusion from his own observation. In a case like this the investigating officer must not do anything that will injure or destroy the document, so that it can be tested by an expert later on. If, however, it is necessary to make an experiment on the document, a certified copy of the contents should be kept, or, if possible, a copy by photographic process, and a clear note should be made in the case diary stating what changes the document has undergone. The first process is to examine the nature, composition and exterior appearance of the paper, including water-lines, grease spots, etc. If necessary, the paper may be sent to experts such as paper manufacturers who should be given an account of the circumstances of the case. The writing should next be examined with the best available magnifying glass,—the whole of it and not merely the suspected portion,—the aim being to detect any difference in writing in the suspected portion from that in the rest of the document. The document may be placed on the glass pane of a window and the writing scrutinized through transmitted light. It should also be seen if different inks have been employed, and for this purpose it is better to use the micros-

cope if one is available. Another process is to take a photograph of the document and compare it with the original. Many peculiarities which the naked eye cannot perceive will clearly appear on the photograph.

If the above processes do not give any satisfactory result the aid of the chemist should be sought for When erasure by scraping is not convenient the forger employs some chemical substance such as oxalic acid or a mixture of saltpetre and sulphuric acid to make the writing disappear, and the process is often so perfect that it is possible to write on the same place again. All such substances contain an acid, and if the suspected place in the paper is touched with moist blue litmus paper it will atonce be detected if an acid has been used to efface the previous writing. When such a test is successful the paper should be subjected to a chemical process by an expert, and if the operation is carried on carefully, the original writing will re-appear. There are however inks, such as Chinese ink, which it is very difficult to remove by chemical reagents The colour of violet rubber stamp ink can be made to vanish by oxalic acid or by superoxide of hydrogen. Modern aniline ink can be effaced by washing the writing with water and alcohol or by exposure to the sun's rays for a sufficient length of time. Application of ammonia often causes the writing to re-appear which had been effaced by the action of an acid.

False stamps and seals.

Counterfeit stamps and seals are often used in forging documents, specially such as certificates of character or service. They are also used in fabricating evidence to prove *alibi*, as letters and postcards are often produced to prove that the accused sent them on the alleged date of occurrence from a very distant place. It is not always very difficult to secure genuine date stamps from the officers concerned, as they are

not in all cases kept very carefully in the custody of responsible officers, but when a suspicious case presents itself, the investigating officer should make a careful examination of the stamp in order to find out if a forged seal was used. He should then obtain an impression of the genuine stamp or seal and compare it with the suspected one. The facts of the case should also be promptly published in the Criminal Intelligence Gazette so that other instances of using the forged seal or stamp, either before or after the one under investigation, may be brought to light.

CHAPTER VII.

MISCHIEF.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1 :—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2 :—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Comment.

Scope :—The gist of the offence is causing destruction of some property or any change in it which results in an appre-

ciable diminution in its value or utility. What is affected by the act of the accused must be the property of some person. The next essential element is the accused's intention to cause, or his knowledge that he is likely to cause, wrongful loss or damage to the public or to any person. This intention or knowledge is in most cases a matter of inference from the facts and circumstances rather than of direct proof. In considering such facts and circumstances it should be seen if the accused's act was due to an accident or to any recklessness or negligence on his part, as in all such cases he is not liable under this section, *e.g.*, when a person negligently allows his cattle to stray into another's field and damage his crops. The case is different when the accused drives his cattle into another's field or lets them loose near it inspite of remonstrance (*Araz Sarkar, 10 W.R. 29*). If, however, the wilfulness or wantonness is not apparent on the face of the act, it must be shown that it was done with the intention of causing loss or damage. Where the accused set fire to a heap of rubbish in his own field and a gust of wind carried the flame to an adjacent forest and burned it (*Nandeyapagowda, 8 Bom. L. R. 851*) it was held that the neglect was not sufficient to constitute the offence of mischief.

Damage.—The term involves the invasion of a right, but it is not necessary that it should be of a destructive character. It is enough if the invasion of the right causes a diminution of the value of one's property. It is not essential that the right infringed should be an existing and complete right ; the offence may be committed if the act is done with the intention of defeating and rendering infructuous a right about to come into existence. Such was the case where A, knowing that his property had been sold by the Collector to B who paid a portion of the purchase money, cut down some of the fruit trees standing on the land. (*Dharma Das Ghose V. Nusseruddin, 12 Cal. 660*).

Public.—The word "public" includes any class of the public or any community (section 12).

Destruction or injurious change :—"Property" in this section means some tangible property and does not include an easement. So, where the complainant had a right to use the accused's staircase, the destruction of the staircase by the latter was held not to be mischief (*Keru, B U. C. 387*). There can be no mischief if the thing damaged is not "property" within the meaning of the law, e. g. a bull set at liberty at the performance of a *Sradh* ceremony. But if the thing is "property" within the meaning of the law it may be the subject of mischief though it is a trifle, e.g. the acknowledgment receipt of a registered postal article (*Sukha Singh P. R. no. 24*).

To cut a crop that is fit for harvesting is not to destroy it or affect it injuriously (*Mohomed Foyaz, 18 W.R. 10*), but walking across a field of long grass is causing damage (*Gayford V. Chouler, 1 Q. B. 316*). The section contemplates injury to a tangible substance resulting from a physical act of the offender. Where the accused threw a shoe among the men who were seated at a caste dinner and this had the effect, from a Hindu religious point of view, of rendering the food served out to them unfit to be eaten, it was held that they were not guilty of mischief (*Moti Lal, 24 All. 155*). Where tenants finding their fields flooded cut a channel through a railway inorder to let the water run off their fields, they were held guilty of mischief though their motive in doing the act was innocent, *viz.*, saving their own crops (*Chulhan Ahir, 16 C. W.N. 263*). It is not essential that the property interfered with should belong to the person injuriously affected. The offender may destroy his own property and thereby cause damage to another. If however there is no intention to cause worngful loss or damage to any person and the accused deals injuriously with

the property in order to assert his right of ownership and in the *bona fide* belief that it is his own, he cannot be said to commit mischief. So, where the accused removed a building erected without his consent on his land where the constructor of the building had no right to erect it, it was held that his act did not amount to mischief as there was no wrongful loss (*Grove*, I Weir. 489). But a plea of right of ownership will not justify a wanton destruction of property merely in assertion of such a right (*Vengappaiyan*, I Weir, 491). A right to eject a trespasser does not include the right to destroy every thing belonging to the trespasser found on the land.

'Change':—means physical change in composition or form, and not merely a change in value.

Procedure :—It is not illegal to convict the accused of mischief as well as of theft, as where the accused cut down and appropriated the trees growing on a piece of Government land (*Narayan Krishna, 2 B. H. C. 392*). But where the accused stole sheep and killed it, it was held that he could not be convicted of mischief as well as theft and such double convictions were in many similar cases held to be illegal (*Ramla Ratanji, 5 Bom. L. R. 460*).

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Procedure :—Cognizable,—Warrant,—Bailable,—Not compoundable, Triable by Presidency Magistrate or Magistrate of the First or Second class.

Comment.

Maiming :—It does not mean merely "wounding" but causing some permanent injury to, or privation of, one of the members of the body. *(Narayan Singh, 12 B. L. R. 116)*. Breaking a pony's ribs so as to permanently diminish its usefulness *(Nga San Yun, S.J.L.B.404)*, cutting off the ears of a horse *(Marigowda*, 35 Mad. 594 *)*, and blinding a mare by pouring acid into her eye *(Owen Owens*, I Mood, Cr. C, 205 *)* were held to be "maiming". But inflicting an wound which disables the animal for some days only is an offence under section 426 and not under this section *(Subrao Sukhal, 3 Bom. L. R. 503)*.

Animal :—The animal must be the "property" of some person (See the comment on "moveable property" in THEFT) The escape of an animal which had been originally in the condition of *feræ nature*, but was subsequently reduced into possession, does not terminate the owner's right to it and any person injuring such animal is guilty of mischief *(M. Subrayadu*, 1 Weir. 498 *)*.

Manner of causing injury :—It is not necessary to prove that the injury was caused by any instrument other than the hand (*Bullock*, L. R. I C. C. R. 115) or that the injury was inflicted by the accused himself. Injuries caused by setting dogs on an animal, or setting fire to the house where an animal is ordinarily stabled are "mischief" within the meaning of this section if they have the effect of rendering the animals useless.

Rendering useless :—differs from the expression "diminishing utility" which has been used in the definition of mischief. The uselessness should be permanent and should be the effect of an act which is otherwise "mischief" as defined in the Code,—not an uselessness brought about by continuous

ill use of, or overworking, the animal extending over a length of time.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both.

Procedure.—Cognizable,—Warrant,—Bailable,—Not compoundable, Triable by Court of Session, Presidency Magistrate or Magistrate of the First or Second class.

Comment.

Bull, Cow, Ox.—The Madras High Court decided in the case of *Cholay* (Mad. 4th Session, Unrep.) that these terms did not include a 'calf'. The Calcutta High Court held that they did include the young of those animals (*Hari Mandle V. Jafar, 22 Cal, 457*). Bulls set at large according to religious usage are not the subject of mischief (*Romesh Chandra Sanyal 17 Cal. 852*), There is however a material distinction in principle between the case of an animal the property in which is wholly abondoned and that of one in respect of which there is no total abandonment of control though it is allowed to roam at large, *e.g.* an animal set at large after dedication to a temple (*Nalla, 11 Mad, 145*).

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause,

damage to any property to the amount of one hundred rupees or upwards, or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable,—Warrant,—Bailable,—Not compoundable, Triable by Court of Session, Presidency Magistrate or Magistrate of the First class.

Comment.

Explosive substance.—See section 2, Explosive Substances Act (VI of 1908). It includes any materials for making any explosive substance.

Intending to cause.—Mere negligence or carelessness will not make the accused liable unless there is definite intention or knowledge as contemplated in the section, *e.g*, where the accused set fire to a heap of rubbish in his own field and a gust of wind carried the flame to an adjacent forest and burned it (*Nandeyappagowda*, 8 Bom, L.R. 851).

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session.

Comment.

Intending :—The criminal intent has reference to the causing the *destruction* of the building etc. and not to the committing the mischief by fire (*3 W.R.* (*Cr. L.*) *18*).

'Building :—All sorts of structure are included in this term from the "grass or mat huts of the lowest classes" to the "valuable dwellings of the better classes". It is not necessary that the structure was finished and completed in all its details (*Manning*, L.R. 1 C.C. R. 338). The term 'building' does not include such temporary structures as *tattie* sheds put up by coolies.

Punishment :—The amount of damage actually done is not altogether the measure of the penalty to be inflicted in a charge under this section. The position of the house etc, and the lives and other property which were endangered by the act of the accused should form an important factor in determining the sentence (*8 W.R.* (*Cr. L.*) *18*).

440. Whoever commits mischief, having made preparation for causing to any person death or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Procedure :—Cognizable—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the First Class.

(*See comment on section 382*).

INVESTIGATION.

I. CATTLE-POISONING.

The object of this form of crime is to get the hides of the poisoned cattle and it is therefore confined exclusively to classes whose ordinary business is the curing of raw hides, dealing in them and working generally in leather. Quite a large number of these cases are reported either as theft or missing of cattle, and as investigation is not always taken up with sufficient promptness nor carried on with the requisite vigour, the criminal gets every facility to do whatever is necessary to efface all traces of the crime including the disposal of the hide. The investigating officer should therefore bear in mind in every case of theft or missing of cattle that it is quite likely that the animal is no longer in existence, its hide haing been safely lodged in a hide merchant's godown. Investigation should therefore be directed in this channel as well, and as promptly as possible. When the case of suspicious death or disappearance of an animal is reported, an enquiry should be immediately made with a view to find out if there had recently been any unusual number of deaths of cattle in the locality and, if so, who took away the hides of those cattle.

In cases in which the carcasses are available, it is often difficult to discover the criminal or secure any tangible evidence even if he is spotted out. Only those cases therefore generally come up for trial in which the accused are caught or seen in the act. In most cases the primary duty of the investigating officer consists in searching the accused's or suspect's house for poison, and he should therefore have a clear idea of the different poisons ordinarily used for the purpose. It is very rarely that the investigating officer sees the animal before its death, and he will therefore have to depend in most cases on the reports of witnesses regarding the symptoms of the poisoning. It is

necessary however to fix, as soon as possible, the nature of the poison used so that proper enquiry may be started with a view to find out how the poison was obtained.

The following poisons are ordinarily used :--

(1) **Arsenic** :—It is used in three varieties, *viz.* (a) White arsenic (Arsenious Oxide,—Vernacular *senko* or *sankhia*) ; (b) Yellow arsenic (Arsenious Sulphide,—Vernacular *Horital*) ; (c) Red arsenic (Arsenic disulphide,—Vernacular *Mansal*).

Symptoms:—Salivation, thirst, loss of appetite, violent colic, foetid diarrhœa sometimes with purging of blood, paralysis of the hind extremities, coldness of ears and horns, convulsions, stupor. The urine is albuminous and often bloody. *In dogs.*—nausea, vomiting, painful evacuations, moaning and death in convulsions.

Arsenic is generally used by Chhoto Bhagiya Muchis (see "Criminal Tribes—Chapter XI") and is thrown before the animal wrapped in plantain leaves.

2. **Indian Liquorice.**—(Vernacular *Rati, Kunch or Gunchi)* It is the seed of a self growing jungle creeper called "*Karjani*" of which there are two varieties, one with scarlet flower and seed, the other with white flower and seed. Either kind is equally dangerous as blood poison. The decorticated seeds are pound into a very smooth paste with water and then made up into small sharp pointed needles which are called *Sutari.* When dried in the sun they become extremely hard, and two of them, about ¾ inch in length, are inserted in a bamboo or wooden handle by their base. They are driven into the skin of the cattle and the spot just behind the horn is often selected as it is near the brain. Death is caused within 18 to 24 hours.

Symptoms :—The poison has much resemblance to snake venom, and produces general depression, drowsiness, fall of temperature and hæmorrhagic lesions.

Sutari poisoning is chiefly practised by Chhatrisgar Chamars (See Criminal Tribes, chapter XI). They also resort to the method of inserting poison into the *anus* of the animal they intend to kill.

3. **Strychnine.**—(Nuxvomica, vernacular *Kuchila*). The poison occurs in the seeds, the fruit resembling a small orange and containing disc-shaped seeds of greyish-white colour and covered with silky hairs giving them a velvety appearance.

Symptoms :—Uneasiness, fixed looks about the eyes accompanied by salivation and in some cases vomiting. The acute symptoms soon appear, beginning with twitching of the superficial muscles which are speedily followed by acute tetanic spasms of the whole body and great stiffness of the limbs including tight closing of the jaws. The animal is unable to remain standing and falls on his side. The spine is curved, mucous membranes become blue or of leaden colour, eyes prominent and pupils dilated, and death by asphyxia follows. The first symptoms appear within a quarter of an hour to two hours, and death takes place within five or six hours.

4. **Oleander.**—(Vernacular *Karobi*). There is another variety known as yellow oleander (Vernacular *Kalke*).

Symptoms.—Dull, abdominal pain, yellowness and injection of the conjunctivæ, sometimes vomiting. The symptoms develop into frequent spasms of the extremities, the animal falls on sides, has marked tetanic convulsions and dies of heart failure.

5. **Datura.**—The thorny apple is poisonous.

Symptoms :—Nausea and vomiting, injection of mucous membrane, and convulsions accompanied by cries which may be mistaken for rabies. These symptoms are quickly followed by paralysis, the heart getting weaker, the sphincters relaxing, and death taking place in a state of coma.

Post-mortem examination :—In all suspected cases the carcasses should be sent for postmortem examination with a brief note of the case including symptoms noticed by the witnesses. Where there is a Veterinary Assistant he will hold the post-mortem examination on animals at the request of the Police or by order of a Magistrate in connection with a criminal offence or suspected offence. Where there is no Veterinary Assistant, or when that officer is not available, the post-mortem examination will be performed by the Civil Surgeon. *(P.R.B. Vol. V. Rule. 200).*

II. ARSON.

Arson is a form of crime which, in the majority of cases, presents great difficulties to the investigating officer. Direct clues are very seldom available, and circumstantial evidence is often found too insufficient to establish the criminality. The types of cases which we get in this country are almost the same,—lighting a match-stick or some such substance and applying it to an accessible portion of the thatch. Cases of setting fire to big edifices by igniting either an inflammable portion of it or some substance kept within it are very rare here.

In one sense this form of crime is easier to handle than other classes of offences against property as the investigating officer is, from the very beginning, given an idea as to the likely offender, but this is in itself, when considered from another point of view, the source of the difficulty in coming to a clear finding. The complainant would naturally implicate his enemy and would often produce very strong evidence of the enmity, but it is this enmity which is as much an evidence against the suspect as in his favour. In the majority of cases the first problem that presents itself to the investigating officer is to find out if the offence was actually committed or the case was fabricated by the complainant, and he has therefore

to proceed with much caution. The materials usually available do not furnish sufficient data for coming to a clear decision, and the conclusions are therefore not always very sound. It is on account of this that a large number of arson cases are reported by investigating officers as false.

There is another difficulty which the investigating officer has to face. The suspect knows that he will be suspected and so, when he actually commits the crime, he takes every precaution to get up a convincing *alibi* in advance, and the nature of the crime is such as gives him every facility to do this with success. If he can arrange the affair with a bit of cleverness, such as leaving a burning candle in the midst of an inflammable substance contained in the house or kept in its close vicinity, he can very well take himself to a safe distance when the fire actually breaks out and is discovered. More intelligent methods, such as using a train of tinders dipped in a solution of saltpetre, or adjusting a lens against some inflammable substance contained in the house, are used in European countries, but they are fortunately rare here. The difficulty in finding out how the fire broke out is, in almost every case, enhanced by the fact that the appliances are themselves destroyed in the fire. It may therefore be laid down as a guiding principle that in all cases in which the grounds of suspicion against a particular suspect are sufficiently strong, the investigating officer should scrutinize the evidence of *alibi* with extreme caution and should not jump into a conclusion only because such evidence can not be rebutted On the other hand the same caution should be exercised while the direct evidence produced by the complainant is handled. The opportunities of committing this form of crime and leaving the place of occurrence unperceived by others are so great that one would not ordinarily do it in such a manner as to expose himself, and, unless the complainant can satisfactorily establish

that he was apprehending the commission of the offence and taking precautions against it, the investigating officer should place very little reliance on the direct evidence he seeks to bring forward.

Half-burnt match sticks are often found on the ground near the portion of the house set fire to. These should be carefully examined and compared with the sticks of the matches found in the possession of the accused as well as of the complainant. If any half-burnt straw is found near the burnt thatch and the complainant alleges that he pulled them down for extinguishing the fire, the investigating officer should carefully examine the burnt extremity of the straw with a view to ascertain, by looking at the general adjustment of the straw in the thatch, if they were set fire to before or after they were pulled down.

When the cause of the conflargration is not apparent, it should be carefully seen if the fire was accidental, caused either by a careless placing of a burning substance or by quasi-spontaneous or spontaneous combustion. Quasi-spontaneous combustions are brought about by physical causes such as the rays of the sun acting on water, photographic lens or some metal reflector and concentrating on an inflammable substance, or by chemical causes when certain substances, such as metallic potassium and water, produce heat and fire by contact. Spontaneous combustion means the ignition of certain articles at ordinary temperatures. All products of textile plants such as flax, hemp, cotton, etc, ignite spontaneously when they have been soaked in oil, specially linseed oil. Fine coal-dust, zinc-dust, saw-dust, powdered grains and bones are also susceptible to spontaneous combustion.

CHAPTER VIII.

CRIMINAL TRESPASS.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "Criminal Trespass."

Comment.

Scope :—There must be an unauthorized entry into or upon property,—unauthorized, that is to say, either directly against the will of the person in possession, or constructively against his will, in the sense that he who enters has an unlawful intention which, were it known to such person, would make him object, forbid, or prevent the entry that, in ignorance of such intention, he sanctions or permits, or again, if the entry has been lawfully and legitimately obtained, there must be an unlawful remaining, either directly or constructively, against the will of the person in possession, to be judged by the tests already explained (*Gobinda Prasad* 2 All. 465). In either case the unlawful entry or remaining must be with one of the following intentions :—(i) to commit an offence, (ii) to intimidate, (iii) to insult, (iv) to annoy. The first three are explained

in sections 40, 503 and 504 I.P.C., but there arises some difficulty as to the interpretation of the word "annoy" in particular cases because what would annoy one man may not disturb another at all. It has been held in the case cited above that the word 'annoy' must be taken to mean annoyance that would generally and reasonably affect an *ordinary* person, and not what would specially and exclusively annoy a *particular* individual.

Enters into :—The entry must be made by the accused in person. Merely sending a servant to plough up land is not an entry by the master (*Shwe Kun*, 3 L. B.R. 278).

Property :—In this section means immovable property. It does not include an easement or an incorporeal right such as the right of fishery in a public river (*Charu Nayiab* 2 Cal. 354); the infringement of such a right would not make the trespasser criminally liable either for theft or trespass (*Kayaram Sarma* 15 Cal. 402). Where the accused plied a boat for hire at a distance of 3 miles from a public ferry, it was held that his act did not amount to trespass with reference to such ferry (*Muthra*, 1 All. 527).

Possessing :—The property must be in the possession of some person other than the accused and the possession must be actual and not constructive. The section does not, for instance, protect the landlord's possession through his tenant. The question of title should not be raised on a plea of possession, but if the person in possession is himself a trespasser he cannot, by the very act of his trespass, give himself such a right of possession against the person whom he ejects as would make a re-entry, without delay, by the latter an act of criminal trespass (*Browne V. Dawson*, 12 Ad. & E.624). But if the trespasser is allowed to continue in possession and the owner sleeps upon his right without making any effort to eject him, it

will give the trespasser a right to remain in possession and he cannot be forcibly ejected. The offence may be committed in respect of property in the possession of another even though such possession may not have originated in right (*Surwan Singh, 11 W.R, 11*). To make an entry criminal trespass it must be with the intention of intimidating, insulting or annoying the *person in possession.* It follows therefore that only this person is competent to complain, or in other words, the property must be in the possession of a person who can compound the offence under section 345 Cr.P. Code (*Chandi V. Evans, 22 Cal.123*).

'**Joint Possession.**'—When a joint owner of property has been ousted from his joint possession in the property he may bring a civil suit to have possesssion restored to him, but he is guilty of trespass if he takes the law into his own hands and enters upon the property (*Gopalrao Venkatesh, 10 Bom.L R.285*). A joint owner of land (who is in possession) who enters upon the land with the intention or knowledge of doing a wrongful act commits criminal trespass (*Ram Prosad, 8 All. L.J. R. 927*), or for causing such destruction or waste of the joint property as pulling down a common wall (*Cubitt Vrs Porter, 8 B. & C, 257*) or carrying away a portion of the common property (*Khaja Mahomed, 3 Mad. 178*). The entry of a member of a Hindu joint family into the family dwelling place cannot be criminal trespass unless he enters the room ordinarily occupied by another member (*Prankristo Chunder Vrs. Bissonath Chunder, 15 W. R. 6*) ; nor the entry of a stranger with the permission and license of one of the members (*Prankrishna Chandra, 6B.L.R. App. 80*). Where the accused enclosed and cultivated a portion of a burial ground he was held guilty of trespass as the person (corporate) in possession of the burial ground was the portion of the public entitled to use it (*6 M.H.C. App. 25*).

But it was held in another case (*6 M.H.C. App. 16*) that a person who included in his own land a portion of a public footpath was not guilty of trespass. Similarly, it was no trespass where the accused drove a cart over Government waste land in respect of which cart traffic was prohibited by the issue of a notice from the Municipality (*Nga U Thit, U.B.R. 25*); also where the accused fished in a tank to which the public generally had access (*1 Weir, 520*).

'Intent to commit an offence' :—'Offence' in this section means an act punishable under the Penal Code, or under any special or local law with imprisonment for 6 months or upwards (Section 40 I.P.C.). It is not necessary that the offence should be directed against, or affect, the person in possession of the property. (*Chirkwana*, 1 U.B.R. 352).

It must be proved that some criminal intent was present in the mind of the accused, or in other words, that the accused intended by his act to produce a certain consequence and not that he did it only with a knowledge of the likelihood of such a consequence. A trespasser may have knowledge that his act, if discovered, will be likely to cause annoyance, but he can not, in that case, be said to do the act with that intent (*Rayapadaychi*, 19 Mad. 240). The intention may be proved directly or by necessary inference from the evidence given (*Balmukund V. Ghansamram, 22 Cal. 391*).

Annoy :—The mere presence of a particular man may be annoying, but unless he is present with the intention to annoy he has not committed trespass. Mere knowledge on the part of the accused of a *possibility* of annoyance is not enough, but he is guilty of trespass if it can be shown that the annoyance was the natural consequence of his act and he *knew that such would be the consequence* (*Laxman Raghunath,4 Bom. L.R.280*). This view is not however in keeping with that held in similar

cases by the Calcutta and Bombay High Courts (see *Chunder Narain*, *4 Cal. 837* and *Q.E. Vrs. Rayapadayachi*, *19 Mad. 240*)). Where the accused entered into the complainant's house with the intention of having illicit intercourse with his sister, he was held guilty of trespass in as much as the particular object could not be attained except by causing annoyance to the owner of the house. In such a case a man may well be said to intend the inevitable consequences of his act (*Balmukund V. Ghansamram*, 22 Cal. 391 ; *Ram Saran P.R. no. 12 of 1906* ; *Kangla*, 23 All. 82). Similar view was held in a case in which the accused removed the roof of a house belonging to him which the complainant occupied as his tenant and the removal of the roof caused the wife of the complainant, a *pardanashin* woman, to be exposed to public view (*Dheramal*, 1 U.B.R. 350).

Where the accused entered on the land of another to stop him ploughing in order to make him render an account (*Weir 204*), and where a person unauthorizedly entered the compound of the complainant's house in order to get into a neighbouring house for executing a warrant of attachment (*Luxmon Raghunath*, 4 Bom. L.R. 280), it was held that the offence of trespass was committed.

Bona-fide claim :—An entry upon the land of another under a *bona fide* claim of right does not amount to trespass. In such a case it is the absence of the criminal intent which makes the act of the accused non-criminal. It is the duty of a Criminal Court to find out whether the entry of the accused was in the exercise of a *bona fide* claim of right or with one of the intents (to commit offence; or intimidate, insult or annoy) mentioned in the section. The existence of a *bona fide* claim of right is not irrefutable evidence of the absense of a criminal intent (*Chhakoo Mandal*, 11 C.W.N. 467). If the circumstan-

ces are such that the accused could not have entertained the belief in good faith that he was entitled to the possession of the land, it would be a fair inference that he intended the annoyance which his action must have caused to the complainant, and the conviction would be proper (*Devarasetti*, 1 Weir. 516).

Superior title in the accused does not give him a right to eject the complainant who is actually in possession otherwise than as a mere trespasser (*Rabi Lochan Vrs. Purna Chandra Dey, 11 C.W.N. 171*). Where A was in peaceful possession of land which he claimed to hold in mortgage from B, and C entered on the land on the ground that he had bought it from B, it was held that A was not liable to be ousted from the land except in due course of law and C was guilty of criminal trespass (*Mya Zan*, 1 L.B.R. 358). The accused were the prior lessees of a property, which the complainant purchased in execution of a decree, and suffered the latter to take possession and exercise undisturbed rights of ownership for two months; they then forcibly ejected the complainant and were thereupon held guilty of criminal trespass (*Kailash Ghose, V. Jugal Lohar*, 1 C.L.J. 104) Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with other persons, is no criminal trespass unless the intent to commit an offence or to intimidate, insult or annoy is conclusively proved (*Gobind Prasad*, 2 All. 456; *Shah Muhammed*, P.R. no : 13 of 1905).

442. Whoever commits criminal trespass by entering into, or remaining in, any building, tent, or vessel used as a human dwelling, or any building used as a place of worship, or as a place

for the custody of property, is said to commit "house-trespass."

Explanation :—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Comment.

Building :—See section 380. The open compound of a house can not be held to be building. The mere surrounding an open space of ground by a wall or fence of any kind can not be deemed to convert it into a building (*Palami Goundan*, 1 Weir, 523). A cattle-fold or pen with a thorn-hedge round it is not a building (*Sucha Singh* P. R. No. 57 of 1887); similarly, the courtyard of an uninhabited house (*Dullee*, 6 N. W. P. 307). An entry upon the terrace or roof of a house is not house-trespass (*Alla Baksh*, P. R. No. 9 of 1887).

Entry with consent :—There can be no house-trespass where the entry is effected by leave or license of the owner in charge of the house though the intention is to commit an offence, e. g., where A offered a bribe to B, a public servant, and B, with a view to entrap A, asked him to bring the money to his house which he did (*Kamarajee*, 1 Weir 534). But the case is different where the entry, though legal or with the owner's permission, is followed by a remaining in the house with the intention of committing an offence e. g., an assault (*Bashikachari*, 1 Weir, 528). But this sort of remaining can not be strictly called unlawful unless it is continued even after the withdrawl of the occupier's consent which made the entry legal.

The offence intended to be committed need not, as has been explained in the preceding section, be directed against the person in possession, but the intimidation, insult or

annoyance need be so directed. Where the accused entered into the complainant's house *in his absence* with intent to have sexual intercourse with his mother, a widow, he was held not to have committed house-trespass as his act, which he tried to keep concealed from the complainant, could not be said to have been done with the intention of insulting or annoying him (*Ambika Charan Sarkar*, 4 C. L. J., 169).

A Police Officer entering at midnight the house of a suspicious character to see whether he is in the house may be held guilty of house-trespass (*Dorasami Pillai*, 1 Weir, 259).

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Comment.

'Conceal' :—A man who enters by the back-door, or who alters his appearance so as to pass for another person who has a right of entry, may be said to take precautions to conceal his presence. There must be evidence that the offender concealed his trespass ; if he enters an inhabited house through the usual entrance and the occupier of the house fails to see him, he can not, only on that ground, be convicted of lurking house-trespass.

Who has a right to exclude or eject :—Ordinarily, the person having right to eject the trespasser is one who is in physical possession of the house. But this right appears also to belong to persons in joint possession with him as well as to his agents and servants. The word "exclude" suggests unlawfulness of the initial entry, while "eject" has reference

to cases in which the original entry is lawful, e. g. the right of a husband to eject his wife's paramour who had been invited into the house by the wife but is surprised in the house by the husband.

House :—Entry upon the roof of a house cannot sustain a conviction for lurking house-trespass (*Mullua*, 20 A. W. N. 15), or for house-breaking (*Fazla*, P. R. No. 9 of 1890).

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

The section implies that the first entry should be after sunset, but if a person unlawfully remains in the house after sunset, though he might have entered before sunset, he may be convicted under this section.

445. A person is said to commit "house-breaking", who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described ; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than him-

self or an abettor of the offence for human entrance ; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through

the wall of Z's house and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his doorway. A forces a passage by knocking Z down and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standig in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Comment.

'Committing an offence' :—It is not necessary to prove what particular offence the house-breaker intended to commit. It may be shown that his intention was to commit *any* offence.

'Passage made by himself' :—It means a new passage which was not in existence, such as making a hole in the wall or roof etc. It includes such cases as breaking a pane of glass.

'Not intended for human entrance' :—e.g. by scaling a wall (*Emdad Ally*,2 *W.R.65*), or getting down a chimney, etc.

'Has oepned' :—A door or window can not be said to be open if it is shut though not fastened with a bolt, hasp or some such thing. It is house-breaking where the fastening of a window or door is removed by the hand introduced through a broken pane(*William Robinson*, 1 Mood. Cr. C. 327). It will be house-breaking if the offender removes the *tatti* of a hut which had been so fastened with a bar or string as to prevent the entry of an outsider.

'Criminal force etc.' :—This clause deals with constructive breaking. 'Using criminal force',—e.g. where a man is struck with a *lathi* ; 'assault',—e.g., where a *lathi* is brandished or such gesture is made as causes any person present to apprehend that the offender is about to use criminal force ; 'threatening with assualt',—e.g. where the offender says that he would strike with his *lathi*, but makes no gesture to show that he is about to carry his threat into execution.

'House'—Includes "Vessel" (see illustration (b)) and probably "tent" as well.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Procedure :—Cognizable,—Summons,—Bailable,—Compoundable,—Triable by any Magistrate,—Triable summarily.

Comment.

When an accused has once been convicted of criminal trespass for entering on certain land, he can not again be prosecuted for a further trespass by remaining on the land (*Ma Hla Ya*, 4 L. B. R. 276).

A person who enters upon property in the possession of another may be guilty of criminal trespass, without reference to the question in whom the title to the land may ultimately be found (*Ram Dayal Mundle*, 7 W. R. 28). Whether a party is in possession is a question of fact to be ascertained by taking evidence. The existence of a Civil Court decree against one party does not determine the question of possession, unless effect is given to the decree in due course of law (*Mi Tok*, 1 U. B. R, 262).

Regarding the question as to who should be the complainant in a case of trespass, the view of the Calcutta High Court is that the only person competent to complain is the person in actual possession of the property and who is competent under the law to compromise the case (*Chandi Vrs. Evans*, 22 Calcutta 123). The Bombay High Court has however held that any person might complain (*Kesaval*, 21 Bombay, 536)

Punishment :—

If the trespass is not a part of the major offence committed, a trespasser committing an offence may be awarded cumulative punishments for the trespass as well as for the offence committed. (See section 235, ill. (b), Criminal Procedure Code , also section 71 Penal Code).

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Procedure.—Cognizable,—Warrant,—Bailable,—Compoundable,—Triable by any Magistrate,—Triable summarily.

449. Whoever commits house-trespass inorder to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session.

"**Offences punishable with death**"—See sections 121, 132, 194, 303, 305, 307, 396, I. P. C.

450. Whoever commits house-trespass inorder to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Procedure :—The same as section 449.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine ; and if the offence intended to be committed is theft, the term of imprisonment may extend to seven years.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class, if theft was intended to be committed. If any other offence punishable

with imprisonment was intended to be committed, then bailable and triable by any Magistrate,—Triable summarily.

Comment.

The prosecution should prove that the accused's entry was with some criminal intent, and this may be inferred from the circumstances of the case in the absence of any satisfactory explanation on the part of the accused. But this alone is not sufficient to justify a conviction under this section as it must be definitely proved that the intention of the accused was to commit an offence *punishable with imprisonment*, though the prosecution is not bound to prove *the specific offence* which the accused intended to commit (*Samban*, *1 Weir*, 533). If the intention was not to commit an offence, as where the accused entered the house in order to have sexual intercourse with an unmarried relation of the complainant, he could not be convicted of this offence, but he could be so convicted where the woman was the complainant's wife (*8 M. H. C. App. 6*; *1 Weir, 532*), provided that the husband had no connivance (*Brij Basi*, 19 All. 74). The Madras High Court has held that there can be no conviction when the husband declines to complain or declines to admit that the intention of the accused was adultery (*5 M. H. C. App. 5*), but it has been held in Bombay that the omission of the husband to prosecute does not absolve the prisoner from criminal liability under this section or section 457 (*Bandhu*, B. U. C. 689).

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for

a term which may extend to seven years, and shall also be liable to fine.

Procedure :—Cognizable, Warrant, Not bailable, Not compoundable, Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Comment.

This section differs from section 451 in this respect that the trespass is not only with the intent to commit hurt etc. but is accompanied by some overt act amounting to a preparation to cause hurt etc. Such preparation may consist in carrying a *lathi* or some other weapon when the entry is effected, but it is not absolutely necessary that a weapon should be carried, for one may enter into another man's house making such a gesture (e. g. clenching of fist) as would sufficiently indicate a show of force. Where the accused entered the complainant's house for the purpose of beating his (accused's) wife who had taken refuge in it, he was held guilty under this section (*Katakam Narasingadu*, Weir. 329).

'Wrongful restraint' :—

Where the accused went into a house with a forged warrant of arrest and took away one of the inmates of the house against his will, he was held guilty under this section (*Nund Mohan Sirkar, 12 W. R. 33*).

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Presidency Magistrate or Magistrate of the first or second class,—Triable Summarily.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may extend to ten years.

Procedure :—Same as section 453. Triable also by Court of Session. See the sections defining 'house-trespass' and 'house-breaking.'

Comment.

Offence :—One is guilty under this section where the offence is not intended to be committed by him personally, but by an accomplice of his.

'**Where offence intended is adultery**':—See section 451.

'**Lurking or breaking**'—There should be specific evidence of lurking in the house or of house-breaking. Where the only evidence was that the accused was seen leaving the house of the complainant and was seized before sunset on an outcry being raised by a female of the house, and he was found carrying complainant's jewels, he was held guilty under section 380 and not under this section (*Khuda Buksh, P. R. No. 10 of 1886*).

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with im-

prisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class,—Triable summarily.

Comment.

There can be no conviction under this section unless it is proved that the accused had the criminal intent requisite to constitute an offence of criminal trespass (*Jotharam Davay, 2 Mad. 30*). The intention may be disclosed by the facts of the case, and though it is not necessary that it should be proved *specifically*, the evidence adduced must sufficiently establish the intention as criminal, and it is then the right of the accused to claim that it was one least culpable to himself (*Balmukund V. Ghansam Ram, 22 Cal. 391*).

Entry to commit adultery :—See section 451. Where a stranger got into the sleeping apartment of a woman in the middle of the night, and when an attempt was made to capture him, used great violence in his efforts to escape, it was held that the Court could presume that the accused had such

an intention as was provided for in this section *(Kailash Chandra Chakraburty, 16 Cal. 657)*. Similar view was held in a case in which the accused was found inside the complainant's house at midnight and his presence was discovered by the wife of the complainant who cried out that a thief was taking away her neck ornament (*Ishri*, 29 All. 46). It is not necessary in a case like this that the husband should bring a charge of adultery (*Teli*, 16 C. P. L. R. 182) or that *he should prove* that the entry of the accused was *not with his consent.* Non-consent of the husband should ordinarily be presumed and the question of consent becomes material only in a case in which it is pleaded by the accused as an excuse. If however he takes some other plea, such as *alibi*, he cannot urge in appeal that the charge should fail on account of the prosecution having failed to prove non-consent, specially if the husband had been a prosecution witness and the question of consent was never raised in his examination (*Ishri*, 29 All. 46).

Where the accused was found inside the complainant's house and the evidence was that he had gone there in order to have intrigue with the latter's widowed daughter-in-law, he was held not to have committed an offence under this section (*Lajje Ram*, P. R. No. 12 of 1898).

'Charge' :—In a charge under this section it is not necessary to *specify* the guilty intention, but such specification is necessary in a charge under section 457. In a charge under this section it must be proved that the accused had a guilty intention, but it is not necessary to show which of the several guilty intentions he had, so long as it is shown that he had one or other of the intentions specified in section 441 (*Balmukund V. Ghansamram*, 22 Cal. 39). If the accused pleads that his intention was innocent, it is for him to show what specific intention he had (*Ishri*, 29 All. 46).

The splitting up of one aggravated offence into separate minor offences is prohibited, e. g., conviction under sections 456 and 380 instead of under 457 (*Ram Chandra Kairi*, 6 W. R. 39).

457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ; and, if the offence intended to be committed is theft, the term of imprisonment may extend to fourteen years.

Procedure :—The same as section 456.

Comment.

See comment on sections 441, 442, 443, 445 and 456.

Entry to commit adultery :—See sections 456 and 451. A charge of house-trespass with intent to commit adultery can be entertained without a complaint by the husband or person having care of the woman (*Subez Ali*, *P. R. No. 2 of 1877* ; see also *Bandhu*, *Cr. R. 11 of 1894*). Though it is not necessary for the husband to bring a formal charge of adultery (*Kangla*, *23 All. 82*), he must convince the Court that the intention of the accused was to commit adultery (*Brij Basi*, 19 All. 74), and if, out of a feeling of shame, he suppresses this or maintains its impossibility and alleges a different intent of the accused, such as commission of theft, the Court would be justified in proceeding on the assumption that the entry had not been made with an intention to commit adultery (*5 M. H. C. R.* (*App.*) *5*). But this view is not unanimous

(see *Bandhu* cited above). It has been held by the Calcutta High Court in *Balmukund Ram V. Ghansamram* (22 Cal. 391) that the prosecution need not establish a case of specific intention ; it is enough if it proves criminal intent, though it is not clear whether it is adultery or theft so long as it is one or the other. But in such a case the Court is bound to punish the accused on an assumption that his intention was the least culpable.

'Charge' :—See section 456. The charge must allege that the entry was made for the purpose which makes it punishable under this section and so the offence intended to be committed should be specifically given in the charge. A charge under section 457 cannot be split up into two minor charges under sections 456 and 380. *(Ram Charan Kairee 6 W. R. 39).*

It should be proved that the intention of the accused was to commit an offence punishable with imprisonment, and the evidence should be such as would not justify an inference of any other intention. The actual commission of the offence intended is indeed the best proof of the existence of such an intention, but where such offence has not been committed the intention may be inferred from the facts and circumstances of the case *(Sher Singh, P. R. No. 14 of 1883).* Where the offence contemplated is committed, the accused would be additionally liable for the commission of such offence and he may be convicted of both house-breaking and that offence. The Bombay High Court has held in *Queen Empress V. Malu Arjun* (1 Bom. L. R. 142) that (1) a person who has committed house-breaking in order to commit theft (section 457) and theft (section 380) can be charged with, and convicted of, each of these offences ; (2) that a Court in awarding punishment (under section 71 I.P.C.) should pass one sentence for either of the offences and not a separate

sentence for each ; (3) if two sentences are nevertheless passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity only and not an illegality. The Calcutta High Court held a different view in earlier cases (see *Chytun Bowra*, 5 *W. R.* 49 ; *Nobo Pullee*, 6 *W.R* 49) but it has held in a recent case (*Fakira Khan* 4 *C. L. J.* 90) that infliction of separate punishments is not bad in law provided that the aggregate punishment does not exceed what the Court can inflict for either of the offences.

Where offences under sections 457 and 380 are committed in one transaction, it is very desirable that formal convictions under both sections be recorded, in order that if the accused subsequently commits another theft, technical difficulties may not arise (*Nga Pan Bee*, 2 *Bur. L. T.* 19).

Attempt :—A conviction for an attempt to commit an offence under this section is not a conviction under Chapter XVII of the Code, but is under section 511, and so does not come under the provisions of section 75 (*Harnam*, P. R. No. 17 of 1907).

Whipping :—Whipping may be added if the intention was to commit theft or any other offence punishable with whipping. A sentence of whipping is illegal in the case of a conviction for an attempt to commit house-breaking with intent to commit theft (*Yella Parshia*, 3 B. H. C. 37).

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting

any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Comment.

See section 452.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Session.

Comment.

This section does not apply in the case of an *attempt* to commit lurking house-trespass or house-breaking. These offences must be completed before the injury is inflicted. Where the accused, while making a hole in the wall of the complainant's house, were surprised by a Chowkidar and in their attempt to escape used their *lathies* and one of them fired a pistol, it was held that they were not guilty under this section but under section 452 and 511 (*Ismail Khan, 8 All, 649*). Again, the injury must be caused *while committing* the house-trespass or house-

breaking and *not after*. (*Imamuddin, P. R. no : 17 of 1876*). In other words it applies only where the accused has made his entry into the house and before he leaves it.

Under this section (as also under section 460) it is not necessary to prove that the accused went out with the intention of causing grievous hurt etc. It is sufficient to show that grievous hurt etc. was caused or attempted (*Reg. V. Sabed Ali*, 20 W. R. Cr. 5).

'Death' :—See section 382.

'Grievous Hurt'—See section 397.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause, or attempt to cause, death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Same as section 459.

Comment.

See sections 394 and 396.

The offence of house-breaking must have been completed to bring an offender within the terms of this section (see section 459). Where the accused were interrupted in their attempt to break into a house and one of them killed one of the inmates, and there was no evidence which of the accused caused the

death, it was held that the accused could not be guilty under this section as the offence of house-breaking was only attempted and not committed (*Saifudin, P. R. No. 16 of 1874*).

"A lurking house-trespass or house-breaking by night by two or more persons must be proved. It is not necessary that all should take part in the actual house-breaking or entry, but they must either do that, or be so near together, while the housebreaking etc. is going on and the death or grievous hurt is being caused, as to be able to give immediate assistance so that their presence may be said to give aid and encouragement to the one who is actually committing the more serious offence"—*Starling.*

'At the time of the committing':—The expression must be limited to the time during which the criminal trespass continues and cannot be extended so as to include any prior or subsequent time (*Jaffir, P. R. no : 2 of 1882*).

Charge :—Where there is house-breaking and attempt to cause grievous hurt, the charge should be under this section and not under sections 457 and 325 (*Lukhun Dass, 2 W.R. 52*).

This section does not appear to include the penalty of the actual offender (i. e. of the man who actually commits the murder etc) when such an offender is known, because the penalty provided for in this section would be wholly inadequate to his case. It has application in a case in which the actual offender cannot be ascertained or the evidence against him is insufficient (*Umar Din*, P. R. no : 1 of 1891).

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains, or which he believes to contain, property, shall be punished with imprisonment or either description for a

term which may extend to two years, or with fine or with both.

Procedure :—Cognizable,—Warrant,—Bailable,—Not compoundable,—Triable by Presidency Magistrate, or Magistrate of the first or second class.

Comment.

An offence under this section is complete the moment the receptacle is broken open or unfastened. If the contents of the receptacle are then stolen, the accused should be convicted of theft in addition. Where the accused, who lived with his uncle, broke open a chest containing his uncle's money and stole some money, he was held guilty under section 461 and 379, and not under 457 (*Tasuduk Hossein*, 6 N. W. P. H. C. R. 301).

'Closed receptacle' :—It means not only a closed box, chest or package, but includes a room or part of a room. The receptacle must be closed i. e, by means of a chain or bolt etc, but not necessarily locked. Cutting open a *gola* of paddy is an offence under this section, unless the *gola* is some permanent structure in the nature of a building in which case the offence is one under section 454 or 457.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure :—Cognizable, Warrant, Bailable, Not compoundable, Triable by the Court of Session, Presidency Magistrate or Magistrate of the first or second class.

INVESTIGATION.

BURGLARY.

The general principles of investigation given in Chapter I as well as the portion of Chapter II dealing with the investigation of cases of theft should, where necessary, be referred to while an investigation into a case of burglary is made.

Every Station Officer should impress on his Chowkidars as well as the Village Panchayets or headmen that they should, immediately on the receipt of information of a case of burglary, visit the place of occurrence and guard it against the approach of others till the arrival of the investigating officer. It is a great help to the investigating officer if he finds the scene of the crime in an undisturbed state. They should also be instructed and practically trained to take, with the help of villagers, prompt steps to track the offenders,—specially in cases in which foreign criminals appear to have been concerned. Similar action should be taken by the investigating officer himself directly he receives an information, and he should always remember that success in the investigation will in most cases depend on the promptness with which the offender is apprehended.

The condition of the place of occurrence should be very carefully examined including all traces which the criminal had left behind. Foot-prints, specially those near the place where the entry was effected, should be very attentively observed, and if it is probable that they were made by the criminal, they should be properly guarded They will show from what direc-

tion the thieves came, how they got in and got out and where sentinels were posted. It should also be seen if there are any foot-prints of a boy or of a dog, as there are some criminal tribes (such as Baurias)who employ boys in entering rooms and take dogs with them in their criminal expeditions. If carefully observed the foot-prints may also give the investigating officer an idea as to the number of the thieves. All traces left behind by the criminals, however insignificant, should be observed with the greatest attention, such as a piece of cloth or other garment, a tool or a *lathi*, a bit of paper etc. (For Finger-prints and Foot-prints see Chapter I).

The next important thing is to examine the place of attack. It should be ascertained if the particular spot was carefully chosen on a consideration of the internal arrangement of the house, the habits of the inmates etc, or was simply what the occasion offered as convenient. It should then be found out how or with what instrument the breaking had been effected. The mere fact that the thief made use of some article picked up in the house itself or brought from a neighbour's house should not make the investigating officer jump into the conclusion that he was not an expert or there was no preparation. Expert thieves often avoid burdening themselves with heavy implements and would, in many cases, secure the necessaries in the localities they exploit. The investigating officer should therefore closely question the owner of the implement or other thing (such as a ladder) with a view to ascertain if any one had any special knowledge about the place where it used to be ordinarily kept, or made any enquiry about it before the theft or was seen to watch or take notice of it. It should also be seen if the thief had recourse to any technical process in effecting the entrance or breaking open a receptacle, or employed for that purpose any skilled hand such as that of a carpenter. In such cases the investigating officer should

record a very accurate and detailed description of what he finds, e.g. damage done to doors, windows, safes etc, so that he may consult an expert later on if it is necessary. The investigating officer should also find out what measures were taken by the criminal to prevent surprise. Regarding this every thief, or class of theives, has peculiar practices, but it may be noted as a general rule that an expert thief will not rely for his escape entirely upon the opening by which he enters.

Mode of entry :—The nature of the passage made or used in effecting the entry would often give the investigating officer an idea as to the class of the criminal. A *bagli sindh* (cutting a hole near the side bolt) would indicate the hand of a Magheya Dome, Bauriah, Mina or Bhadak, cutting the thatch would indicate a Gonda or a Mina, entry by the back-door or kitchen may be presumed to be the work of a Dhekaro, and so forth. Too much reliance should not however be placed on such inferences where the other conditions are not in favour of them.

Entering is effected in various ways. In houses having mud or mat walls, the usual mode is to cut a *sindh* at the plinth or to cut the *jhamp* door. In all cases of *sindh* it should be seen if in cutting the hole there was an obstruction, such as a bamboo post of the house which could not be seen from outside or some bulky article inside the room, such as a chest, a row of *handis* etc. This will indicate if the criminal had knowledge of the internal arrangement of the room. Whenever it appears to the investigating officer that the *sindh* is too small for human entrance, he should not arrive at a conclusion before making a practical experiment, preferably with a boy. While examining a *sindh* the investigating officer should try his best to ascertain what kind of implement was used in cutting it, and if he finds any distinct mark left by the implement he should carefully

measure it so that the measurement may be compared with that of any implement which may be found in the house of any accused or suspect.

Entering by window.

Entry is often effected through the window as it is weaker than the door. A thief will at first try to slip through the bars, failing which he will try to remove the whole grating. In the former case he will often employ his boy who will glide through the bars and open the door of the room. In considering whether a particular aperture could let in a human body, it may be said generally that a man can pass where his head can pass. This is not however correct in all cases, but it is almost certain that a man can pass wherever his head plus the thickness of his extended arms can pass, unless the body is abnormal. There are people whose heads are not more than 5½ inches in diameter, and there are many (specially boys) whose heads are still smaller. It may however be generally laid down that whenever the bars are fixed more than 4¼ inches apart they may let in a boy.

If it is impossible to glide through the bars, the entire window is removed. This is not however easy in a brick built house in which case the thief would try some other method. Cases of cutting iron bars are very rare in India, but the window frame is cut at the place where a bar has been driven in and the bar extracted. Besides the grating there are other obstacles in the way of entry through a window, such as shutters, panes etc. Here again there are different processes which depend mostly on the particular construction of the window, those presenting the least difficulty being outside shutters opening outwards. In all such cases the thief acquaints himself with the system of the fastening from beforehand. Glass panes are mostly broken, and in order to prevent the noise a

kind of pad comprised of a piece of cloth lined with a substance of a cohesive nature (such as wax mixed with turpentine) is spread over the glass and it is broken with the help of some soft thing such as a piece of thick cloth. In some cases the pane is removed by detaching the plaster which holds it to the frame. Diamonds are very rarely used to cut the glass. In kuchha houses the easiest method is to remove the whole frame, and this is easily done if some precautions are taken to prevent the noise of the earth falling on the ground. I came across a case in which a window was removed and there was not a particle of earth on the verandah below it.

Entering by the door.

This is not very common as entering by the window is easier. In village houses doors are often suspended on a sort of old fashioned hinges known as ***haskal dumni*** from which it is not difficult to remove the door if the planks are deteriorated at the ends so that they may be raised about two inches or so upwards. But these primitive hinges are now fast disappearing and giving place to hinges fixed with screws. The latter class of hinges may be unfastened by pressure on the door from outside, and if this can be done in a way which leaves no mark of violence on the door noticeable from outside, it may make one believe that the hinge was attempted from inside, i. e. by an inmate of the room. A very careful examination of the hinge as well as of the portion of the plank where it was fixed should therefore be made in all such cases. In cases where the doors do not fasten tightly, the latch may be raised by the introduction of some elongated substance such as an iron bar or the end of an house-breaking implement. When this is not possible the thief would make a hole, either in the door itself or in the wall where the hook is placed, and use some sort of lever to lift the latch. The investigating officer should observe this

very carefully as it will indicate if the thief had any previous knowledge of the position of the latch or the hook. It will, at the same time, furnish materials for inference if the burglary was the work of certain classes of thieves such as Mogheya Domes.

Forcing the lock.

In most cases the lock is broken open. False keys are used more for opening fixed locks than padlocks, as the latter are opened more easily by force. In order to detect how a lock has been forced, the investigating officer should acquire a thorough knowledge about the mechanism of various locks as well as about different kinds of false or skeleton keys which are ordinarily used. The most common method is to remove the whole padlock, and this is done very easily when the two parts of the end of the peg (which is driven into the wood) are not stretched away from one another or twisted round so that the padlock itself serves as a handle to pull the peg out. In some cases the hasp is sufficiently strong and cannot be easily broken but the ring of the peg from which the padlock hangs can be cut in two. If however both the hasp and the ring are sufficiently strong, the padlock in wrenched off by force. In each case the investigating officer should carefully examine the method employed as it will show the way in which the thief had worked and will also indicate if he had any previous knowledge of the mechanism of the lock or of the internal arrangement of the peg.

Entering in other ways.

Cases are very rare in which the thief enters neither by the door, nor by the window, nor by a hole made in the wall or plinth, but by some passage which it is difficult to detect at first sight, such as the service door of a privy or bathroom, or

the skylight or ventilator affixed to a wall. In cases like these the thief does not ordinarily leave any trace of his passage and, in the absence of other indications, suspicion is naturally directed towards the inmates of the house and the servants in particular. (See "Domestic Thefts", Chapter II). It is against this error that the investigating officer has often to guard himself, and he should not indulge in any guess or come to a hasty conclusion before he makes a careful effort to find out if there is any passage in the house which does not strike an ordinary eye at the first sight. Cases are on record in which the thieves used the chimney as a passage both for entry and escape, or reached the topstory of a house by means of the outside bathroom stairs or even rain-water pipes and parapets, and after despoiling the rooms on the upper floors quietly came down to the ground floor and escaped by opening a door.

Besides the mode of entry the investigating officer should carefully observe other characteristic signs present at the spot, *viz*, what kind of instruments were probably used in forcing open boxes or safes, whether the criminal used a light or had enough time for his work, whether he is a workman of a special class or belongs to a particular criminal tribe, and so forth. A detailed note should be made of what is observed and no article found on the scene of the crime should be moved from its place before its nature and position are described in the report. (See "Examination of the place of occurrence", Chapter I).

Regarding enquiry about bad characters and suspects, see Chapter I, also "Investigation of Dacoity."

If, in the course of an investigation, suspicion falls on a person who had been previously suspected or concerned in any case, the investigating officer should not rest contented with merely looking up the Registers in which the suspect's name is down, but he should carefully study the records of that case as well as other records from which the career of the suspect

can be gleaned. This will give him an idea as to the man's special method of committing crime, as well as about his old associates and receivers, and will also indicate how he defended himself on previous occasions. It should also be seen who suspected him in the previous cases and if he is suspected by any one of them in the case under investigation.

CHAPTER IX.

COINING.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money ; and metal which has been so stamped and issued shall continue to be Queen's coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Comment.

The word "coin" as defined in this section means "current coin," current either in British India or anywhere else, and not an obsolete coin or one no longer in use, such as the gold Mohur of the reign of Shah Jahan. (*Kushali*, 29 *All.* 141). One of the tests whether a particular piece of metal is a "coin" or not is to see if it is in circulation as a medium of exchange, or, in other words, if there is the possibility of one's obtaining in exchange for it goods of any kind in the market. There are some coins, such as Joypur Mohurs, which do not possess an absolutely fixed value, but they pass as coins in some parts of

the country and have a general standard of value. Their use as coins has not been authorized by official proclamation, as is usually done in the majority of current coins, and so they are no legal tender, but they are 'Current Coins' by common usage and come within the definition of 'Coin' as given in this section (*Runj Beharee, 5 N. W. P. H. C. R. 187*). The test whether a piece of metal is "Queen's Coin" or not is to see if it has been *issued by the authority* mentioned in the section and *for the purpose of* its being used as money; it is not necessary that it must be actually in use as money at the time when the offence is committed, and in this respect it differs from "Coin".

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to he likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Procedure.—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Court of Sessions.

Comment.

Counterfeit :—A person is said to counterfeit who causes one thing to resemble another thing, intending, by means of that resemblance, to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception or knew it to be likely that deception would thereby be practised. (*Section 28 I. P. C.*)

The above definition implies intention to deceive or knowledge of likelihood of deception, and this may be inferred from the closeness of the resemblance as well as from other cricumstances of the case. It is of course open to the accused to show that he had no intention to deceive, but the closer the imitation the greater is the presumption of guilt against him.

Coin.—As defined in the last section *i. e.* current coin. Counterfeiting a coin of Emperor Akbar's time is not an offence (*Bapu Yadar, 11 B. H. C. 172*). Counterfeiting Kuldar or Joypur gold Mohurs was held to be an offence under this section because they had a currency as coins though they did not pass at a fixed value (See Sec. 230). If one counterfeits what is not a coin (such as a medal) and fraudulently represents it as money, he commits no offence under this section (*1 Weir, 219*)

Counterfeit coin :—It should first be proved that the coin is not a genuine one but apparently resembles a genuine coin. It is not necessary that the imitation should be perfect or the process of counterfeiting complete (*1 Weir, 219*), or that the coin should be in a fit state to be uttered. A counterfeiting with a small variation in the impression on the coin, done with the intention of evading the law, is counterfeiting within the meaning of this section (*1 East, P. C. C. 4*). The same is the case where there is no impression of any descrip-

tion on a counterfeit coin if it is meant to pass off as a worn out or defaced coin (genuine) of a particular denomination (*Samuel Wilson, 1 Leach, 285*).

The question as to how much imitation amounts to counterfeiting is a question of fact. The ordinary test is whether the amount of resemblance is likely to deceive a common man in the street and not a particularly careful man or an expert. If there is such a resemblance it is no defence to say that the counterfeiting could be detected by a bit of close examination.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure—Same as section 231.

Where the process of counterfeiting is not complete, the accused can not be convicted under this section *as well as* under section 235 (for being in possession of materials for counterfeiting), but only under one or the other of the two sections (*Hayet, P. R, 14 of 1904*).

Comment.

Counterfeiting :—See section 231.

There must be an intention to deceive, *i. e.* an intention that the coins made will be used as Queen's coin or a knowledge that they may be so used. If there is no such intention or knowledge there can be no offence under this section. Where the accused prepared some false coins merely for the purpose of passing them secretly into the house of his enemy in order to get him into trouble, it was held that he was guilty of fabri-

cating false evidence and not under this section or section 235 (*Lal Chand, P. R. no. 43 of 1911*).

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Procedure.—Cognizable ;—Warrant ;—Not bailable ;—Not compoundable ; Court of Sessions, Presidency Magistrate or Magistrate of the 1st class.

If the accused has a previous conviction he should be committed to the Court of Sessions (Section 348 Cr. P. Code).

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 231.

Comment.

In this as well as in the previous section mere acts of pre-

paration towards the offence of coining have been made punishable.

Instrument or die :—It is not necessary that the instrument should be, by itself and without the aid of any other instrument, sufficient to perform any part of the making of a coin, such, for instance, as a collar which is used in coining for milling the coins, but in order to do so the coins must be forced through it by another machinery. (*Moore*, C. &. P. 205).

Intention :—The making or mending of the instrument or die should be for the purpose of its being used for counterfeiting coin. If, at the time of making it, the maker honestly believes that it is not for such a purpose, he can not be held guilty if it is subsequently used for coining by the person who gets it prepared by him (*Bannen*, 2 Moody, 309).

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—The same as section 231 if Queen's coin; otherwise the same as section 233.

Comment.

Possession :—Implies voluntary and conscious reten-

tion and not mere physical relation arising from the position of the object, though it may raise a presumption as to the nature of the retention (*Hari Sonar*, 6 Bom. L. R. 887). Such inference may also be drawn from such other circumstances as the bulk of the article which could not be easily overlooked, keeping it locked up, etc. Where the accused was in possession of a box containing instruments for counterfeiting coin, but it appeared that two brothers of his had access to the box, he was acquitted on the ground that he was not in exclusive possession of the box (*Abdul Majid*, P. L. R. no :7 of 1904).

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Procedure :—The same as section 231.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure :—The same as section 233.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—The same as section 231.

239. Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Procedure :—The same as section 233.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—The same as section 233.

Comment.

This section does not apply to the coiner himself who should be convicted only under section 231.

Counterfeit :—See section 231.

Possessed :—See section 235.

'Knew to be counterfeit :—This knowledge is usually a

matter of inference from the circumstances of the case (See Evidence Act section 14, illustratiou (b). In order to prove guilty knowledge the accused's previous conviction on a similar charge as well as his possession of other false coins (whether of the same description or not) either previous to the act charged (*Nur Mahamed*, 8 Bom. 223) or subsequent to it (*Harrison*, 2 Lewin, 118) are admissible in evidence. In one case such a guilty knowledge was inferred from the fact that the accused was a goldsmith and could not therefore be deceived into receiving false coins (*Kandamura*, 1 Weir 221).

Fraudulently :—See section 415.

The intention should be to defraud the party receiving the coin. Giving a counterfeit coin in charity is not uttering (*Page*, 8 *C. & R.* 122).

Delivers ; receive :—Implies delivery or receipt in discharge of an obligation and not mere change of custody such as giving the coin to another to keep it for him (*Sookut*, 4 N. W. P. H. C. R. 62).

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Procedure :—The same as section 233.

Evidence :—In ordinary cases of uttering false coin it will

be assumed that the accused did not know of the spuriousness of the coin *at the time* he received it, and if it is sought by the prosecution to bring the accused under the graver penalties of section 239, it should prove that the accused had such knowledge (*Rango Timaji, 6 Bom. 402*).

In a prosecution under section 241 it should be proved that the accused *knew* the coin to be counterfeit ; mere suspicion on the part of the accused is not enough (*Soorut, 4 N. W. P. H. C. R. 62*).

242. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extand to three years, and shall also be liable to fine.

Procedure :—The same as section 233.

Comment.

Fraudulently :—See section 415.

Possession :—See section 235. The possession must be with intent to defraud.

Counterfeit :—See section 231.

243. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which

may extend to seven years, and shall also be liable to fine.

:—The same as section 233.

Comment.

Fraudulently :—See section 415.

Possession :—See section 235. The possession must be with intent to defraud.

Queen's coin :—See section 230.

Counterfeit :—See section 231.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 231.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 244.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation :—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Procedure :—The same as section 242.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 233.

Comment.

Fraudulently :—See section 415.

Dishonestly :—See section 378.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure :—The same as section 233.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisoment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure :—The same as section 233.

Comment.

Operation :—Such as gilding, silvering, quicksilvering, etc. It should be so far completed as to give the coin an altered apearance.

If the weight is diminished, section 247 will apply.

'Intention':—It is not necessary to expressly prove fraud or dishonesty though they are necessarily implied in the intention.The intention may be inferred from the nature of the alteration effected.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for

a term which may extend to five years, and shall also be liable to fine.

Procedure :—The same as section 233.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine.

Procedure :—The same as section 233.

'**Fraudulently**' :—See section 415.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure :—The same as section 233.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Procedure :—The same as section 233.

Comment.

Fraudulently :—See section 415.

Possession :—See section 235.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the

coin for which the altered coin is passed or attempted to be passed.

Procedure :—Cognizable ;—Warrant ;—Not bailable ;—Not compoundable ;—Triable by Magistrate, Presidency or First or Second class.

INVESTIGATION.

On receipt of a information of a case of counterfeiting coin or uttering, or being in possession of, counterfeit coin telegrams shall be sent to the Superintendent of Police and the Circle Inspector and, in case the offenders have absconded, to such of the neighbouring districts and police stations named in the hue and cry list as are selected by the Station Officer at his discretion. The places to which messages have been sent shall be included in the telegrams to the S. Police and Inspector, and the fact that this has been done shall also be noted in colnmn 4 of the First Information Report. In places where the telegraph office is at a greater distance than the head-quarters of the S. Police or Inspector, a report shall be sent by the quickest means available.

Cases of counterfeiting coin, uttering or being in possession of counterfeit coin and the payment into a treasury of any large percentage of false coins are Special Report cases. In cases of uttering counterfeit coin, Superintendents of Police are allowed to use their discretion. Only such cases as indicate direct connection with professional coining need be repored. Cases of quicksilvering copper coin need not be reported.

HINTS FOR DETECTING COUNTERFEIT COINS

1. A suspected coin should, if possible, be compared with one or more genuine coins of the same description and examined in a good light, preferably with a magnifying glass.

It might also be weighed against genuine coins showing a similar amount of wear. The majority of counterfeits are considerably lighter than genuine coins.

2. When rung on a stone slab or similar hard surface, genuine coin should give a clear high note. Counterfeits do not as a rule ring well; this, however, is not a conclusive test.

3. The colour of the coin should be scrutinized, a brassy or dull leaden appearance would generally point to the coin being counterfeit. Some counterfeits have a peculiar glazed appearance. A genuine coin should be silvery and dull or bright according to the treatment it has received. Coins which feel greasy to the touch should be carefully examined.

4. In a genuine coin the thickness at the rim is made the same all round. In counterfeit coins the rim is sometimes thicker at one point than another and the coin itself may be slightly bent or distorted, so that it will not lie evenly between two others.

5. The edges of the rim should be smooth to the touch. Rough jagged edges are suspicious.

6. The rim of a genuine coin is regularly milled all the way round with straight lines at right angles to the faces. In counterfeits the lines of the milling are often at a slant, the spaces between the teeth are irregular and the lines (or teeth) themselves uneven and broken. The milling can best be examined by placing the suspected coin between two good ones (of the same description) so that the rims of all three are close together and can be seen at the same time. Defects can then be readily detected. Genuine coins, of which the milling has become much worn or which have been used in ornaments or fradulently dealt with, are often filled or otherwise touched up so that no coin should be classed as counterfeit solely on

account of bad milling, but a coin showing good milling is seldom counterfeit.

7. The beading on the inner side of the rim of the coin should be even and regular all round, pearls being uniform in size and shape, and equidistant from each other. On counterfeits the pearls are often badly shaped, uneven in size and spaced at irregular intervals. A peculiarity of some counterfeits is that the pearls are very small and far apart, but this is also the case in some genuine coins of 1840.

8. The devices on the obverse and reverse should be clear cut and well defined, specially in outline. Blurred lines or edges and an imperfect impression (unless plainly due to wear and tear) are suspicious.

9. Letters and figures of the inscription should be clear, well defined and sharp-edged. Blurred, irregular or double lines are to be regarded with suspicion. In some counterfeits the letters are much thinner than on genuine coins.

10. The table or plain surface of the coin (*i.e.*, the portion not occupied by device or inscription) should be smooth, even and free from blemish. An uneven, spotted or rough surface is suspicious.

11. All cast coins are counterfeit. In a cast coin the surface may be granulated or pitted with minute pin holes which appear as black spots to the naked eye, but can be felt with the point of a needle or pin. The milling is often defective, specially at the point where the metal was poured into the mould. The letters and figures in cast coins nearly always present a rounded appearance instead of having square sharp edges.

12. Genuine coins which have suffered from the action of chemical or fire may have a rough and discoloured surface, but this is generally easily distinguishable from the pitting almost invariably to be observed on a casting.

13. Counterfeits made from tin or mixture of tin and lead can be bent, and if held close to the ear they will often emit a cracking noise between the fingers.

14. Coins the obverse and reverse of which are anachronistic *e. g.*, when the former bears the inscription "Victoria Empress" and the latter the date 1862, or "Victoria Queen" with the date 1878, should be regarded with strong suspicion.

15. A counterfeit coin will generally be found to exhibit at least two of the faults indicated above. A coin should not be condemned for only one fault, unless it is very marked.

(It should be remembered that burnt coins sometimes look like counterfeit coins).

DIFFERENT FORMS OF THE OFFENCE OF "COINING."

I. **Preparing false coins** :—The majority of counterfeit coins are either cast in moulds or struck, while some of them are both cast and struck. In some cases the milling is done afterwards with a fine saw. The moulds ordinarily used are made of fine clay or charcoal powder (sometimes mixed with resin or brickdust) and worked to a proper consistency with water and some such adhesive substance as mollasses or gum arabic. (For further details about preparation of clay moulds see the description of "Chhupperbunds" in Chapter XI). Moulds are also made of plaster of paris. Burmese coiners prepare very fine moulds with chalk. Dies are usually made of brass.

The alloy usually used is pewter or tin, brass or zinc with a little quantity of silver. Counterfeit nickel coins are generally made of lead or lead and tin. Brass is mainly used in making false gold coins. They are very rarely found.

In some cases counterfeit coins are subjected to the process of electrosilvering which gives them the colour and gloss of pure silver.

II. **Quick-silvering copper coins** :—The process is too familiar to need any description.

III. **Scraping** :—The silver is scraped out either from the milling or the circular rim.

IV. **Sweating** :—*i. e.* taking out the silver by electro-gilding process with copper, so that the copper gets into the coin and the silver comes out.

IMPLEMENTS AND MATERIALS ORDINARILY USED BY COINERS.

Dies (brass or iron), moulds (vide descriptions given above), ladles, pincers or tongs, oven, melting pot, crucible, small knife, fine saw, file, scale, sulphuric acid, nitric acid, tamarind, soapnut (*rita*). These articles should be looked for when a coiner's house is searched.

CHAPTER X.

DRUGGING.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit, or to facilitate the commission of, an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure :—Cognizable,—Warrant,—Not bailable,—Not compoundable,—Triable by Court of Sessions.

Comment.

The offence in this section consists in administering, or causing to be taken, a noxious thing with one of the two objects specified in the section, *viz.* (1) intention of causing hurt or knowledge of its likelihood, or (2) intention of committing, or facilitating the commission of, an offence. The offence under this section is complete even if no hurt is caused, and in this it differs from section 324 which deals with hurt *actually caused* by means of a noxious thing.

Administers to or causes to be taken :—To constitute administering it is not necessary that the poison should be delivered to the sufferer by the hand of the accused. It was held to be administering where a servant put poison into a

coffee pot containing coffee and told her mistress that she had put the coffee pot there for her breakfast whereupon the latter took the poisoned coffee (*Harley, 4 C & P. 369*). So where the accused put some poisonous substance into his toddy pots in order to detect the person who had been in the habit of stealing his toddy, and the toddy was stolen and sold to some soldiers who drank it and got ill, it was held that the accused was guilty under this section and that section 81 I.P.C. did not apply to this case (*Dhania Daji, B. H. C. R. 59*). Similarly, if A sends poison to B intending to hurt him and it is, by mistake, carried to C and taken by him, it is just the same as if it had been intended for C (*Lewis, 6 C & P, 161*).

Attempt to administer :—In order to constitute administering it is necessary that the poison should be swallowed and not merely taken into the mouth and then thrown out (*Cadman, R & M. C. R. C. 114*). In the latter case it is an attempt to administer. Putting poison in a place where it is likely to be found and taken is also an attempt. Where the accused put some poisonous substance in the complainant's sugar basin, mixing it with the sugar, and the complainant put the mixture into the tea but did not drink it as it tasted bad, it was held that it amounted to an attempt to administer.

A person who procures or supplies poison to another who wishes to take it may be guilty under this section if he has the requisite intention or knowledge. In any case he is guilty of abetment of what substantive offence the other may be guilty of. Where a woman requested the accused to get her something to procure miscarriage and the accused procured a drug and gave it to her which she took in the absence of the accused and which caused her miscarriage, it was held that the accused was guilty of administering or causing to be taken a poisonous drug with intent to facilitate the commission of an offence, *viz*, miscarriage (*Wilson, D & B 127*).

Poison :—Denotes any poisonous substance, *i. e.* a substance which, when administered, is injurious to helth or life. There are substances which produce deleterious effects only when they are taken in overdoses, while there are others which are poisonous but are used in small doses as medicine. If the thing administered is a recognized poison, the offence may be committed though the quantity given is so small as to be incapable of doing harm (*Cramp, 5 Q. B. D. 307*). Where a poisonous substance is administered, the offence is complete though, by ignorance or mistake, it is administered in a form which renders it innocuous (*Richard Cluderay, 4 Cox. 84*).

Any person :—Not necessarily any particular person known to the offender previously (*Dhania Daji, B.H.C.R.59*)

Other thing :—means other unwholesome thing, and not other thing simply (*Jotee Ghoraee, 1 W. R. 7*).

Offence :—In this section denotes a thing punishable under the Penal Code or under any Special or Local Law.

Section 394 :—See "Robbery and Dacoity"—Chapter III. If the offence committed or attempted to be committed is robbery, and hurt is actually caused by the drug administered, the accused is guilty under section 394 I.P.C. Where the accused, with the object of facilitating robbery, administered Datura in such quantity that the person to whom it was given died within a few hours he was held guilty of murder (*Gutali, 31 All. 148*).

INVESTIGATION.

As in the case of professional swindling the informant should be asked to give an accurate description of the offender as well as of the route known or believed to have been taken by him after committing the offence. The list of absent poisoners (vide Rule 233, Vol. V., P. R. B.) should be immediately

consulted as well as the photographs of poisoners (whether absent from home or not) available at the Police Station, the photographs being, at the same time, shown to the informant if he had seen the offender. Immediate steps should be taken to track the accused, and an accurate description of his features, nationality and dress given to the officers and men sent out for the purpose. Telegrams containing such descriptions should be sent to all places, specially railway stations, which the man is likely to visit in course of his retreat, as also to places where he is known or believed to reside or to have associates. Telegraphic intimation is to be sent to the Superintendent of Police who will telegraph the fact to the Deputy Inspector-General, C. I. D. stating if the services of a C. I. D. officer are required. Hue and cry notices are to be sent to neighbouring Railway, River and district Police Stations. The officer recording the First Information will ascertain from the informant if intimation about the occurrence was given to the Village Police, and, in case it was so given, it should be seen if the Village Police officer had an opportunity to communicate it to the Thana by Special Police Telegram but failed to do so.

The investigating officer should lose no time in visiting the poisoned man, giving first aid to him, recording his statement if that is possible, and sending him to the hospital. It should always be remembered that it is from him that the best information regarding the crime and the criminal is likely to be obtained, and so every attempt should be made to save his life. While starting for the spot the investigating officer should take with himself one or two clean bottles, some powdered mustard and sulphate of zinc (divided into doses of 20 grains) if the same are available, some sort of stimulant such as brandy, and a towel or napkin (see "First aid" under each poison), also the photographs of poisoners.

Duties of police officers in cases of suspected poisoning :—

(*i*) Bring away under seal any food(specially *atta* or sweet-meats), drink, tobacco or drugs which may be in the house or near the body.

(*ii*) If vomiting has occurred, swab up with a clean rag any vomited matter which may be found on the person or bed, and seal up the rag in a packet.

(*iii*) Bring away under seal any clothing, matting, wood or mud flooring into which any vomited matter has soaked.

(*iv*) Carefully bottle and seal the contents of any vessel containing vomited matter.

(*v*) Ascertain the exact time between the receipt of food, drink or medicine, the appearance of symptoms and occurrence of death. Also what were the first symptoms ? Did vomiting or purging occur ? Did the person become drowsy or fall asleep ? Was there cramp or twitching of the limbs or any tingling in the throat or skin ?

Rules for the guidance of Court Officers in sending articles for chemical examination :—

(*a*) Under no circumstances shall the forwarding report be packed in the same parcel with the substances to which it refers. It must always go in a separate cover. It shall always state the date of despatch of the parcel.

(*b*) In forwarding suspected substances or weapons, an accurate description of the articles shall be inserted in the report.

(*c*) When several substances are sent, they shall be wrapped separately in paper, and shall be sealed and consecutively lettered in English. A list of the articles, duly lettered and sealed, shall accompany the parcel, and an exact copy in the same handwriting, with an impression of the seal, shall be

entered in the report. This list shall contain the following informations :—

(1) Number and date of report.

(2) Description of articles, A,B,C, etc.

(3) By whom forwarded.

(4) Station, date and seal.

(d) The impression of the seal attached to the forwarding letter shall be protected on both sides by a thin layer of cotton wool to prevent the wax being powdered in transit.

(e) The labelling and numbering of articles shall not be in the Vernacular, but in English.

(f) Under no circumstances shall exhibits belonging to different cases be included in the same parcel.

(g) The carriage of articles must be prepaid.

(h) At all Stations where there is a Civil Surgeon, the parcels shall be sent to the Post Office by that Officer,but where there is no Civil Surgeon, they may be sent through the Sub-Divisional Officer.

Rules to be followed by investigating Officers :—

(i) The above rules are to be observed when an investigating officer sends any article for medical examination.

(ii) Viscera and liquid substances should be placed in new bottles or any other available new receptacles, and carefully secured and sealed.

(iii) The forwarding report should always give :—

(a) date and hour of onset of symptoms.

(b) date and hour of death.

(c) if the body has been exhumed, dates of burial and of exhumation.

(d) statement of symptoms of illness.

(e) note of treatment, if any, by patient's friends, by Police or by a medical man *Baidya* or *Hakim*. *(P.R.B. Vol. IV, Rule 107)*.

Evidence :—As evidence of identification of the offender is of the utmost importance, prompt enquiry should be made with a view to get hold of as many persons as can satisfactorily identify the man. Enquiry should also be mad e in the locality to see if there were other cases of similar drugging. There are reported cases in which the offenders themselves partook of the poisoned meal along with the victims and were found suffering from the same symptoms. Dr. Irving mentions a case in which one Bassawur Singh, a professional poisoner, partook of the poisoned food in order to lull suspicion, robbed his victims when they became insensible, and was himself found by the Police under a tree about a mile from the place, quite insensible.

POISONS.

Poisons are divided into two broad classes,—*viz.* Irritants and Neurotics. The former excite local irritation and inflammation and cause vomiting and purging when swallowed. With the exception of arsenic, which too is very rarely used, irritant poisons are almost as a rule avoided by professional criminals. Neurotic poisons are those which act on the nervous system, brain or spinal cord. 'Cerebral poisons' are a sub-class of neurotics and are almost invariably used by criminals to facilitate the commission of theft or robbery as they have no acrid burning taste like the corrosive irritants and do not, unless given in very big quantity or combined with such irritating substance as alcohol, give rise to vomiting or purging, their action being chiefly confined to the brain, causing delirium or narcotism and tending to cause death by coma. The following is a classification of the cerebral poisons chiefly used in cases of professional drugging :—

(1) *Narcotics*—Opium and Morphine.

(2) *Anæsthetics*—Chloroform ; Cocaine.

(3) *Inebriants*—Alcohol.

(4) *Deliriants*—Datura, Indian Hemp ; Belladona.

ARSENIC.

Frequently used for committing murder, but very rarely in professional drugging. While used by professionals it is generally given along with *goor*, sugar, sago, *satoo* or sweetmeats. The poison has very little taste and so may be easily administered in any article of food. It is also used in its sulphide form (Yellow powder, Verna. *Harital)*. Two or three grains may cause death.

Symptoms :—Burning pain in stomach ; nausea ; vomiting of brown matter mixed with mucous and blood; purging, often with blood ; faintness ; depression ; severe cramps in claves of legs ; skin cold and clammy ; pulse small, frequent, irregular ; breathing painful ; sensation of heat in throat and often intense thirst. There may also be retention of urine and appearance of rash on skin. In some cases the symptoms are narcotic and nervous instead of irritant.

Arsenic poisoning distinguished from cholera.

Arsenic poisoning.	Cholera.
1. Presence of blood in the stools.	1. Its absence.
2. Stools have no rice-water appearance except in the later stages.	2. Stools have such appearance.
3. Pain in the throat precedes vomiting.	3. No such pain.

Besides the above, the prevalence or absence of cholera in the locality should be taken into consideration.

First aid :—Vomiting should be induced with copious draughts of warm water with salt, or with a tablespoonful of mustard (powder) in water, or a scruple of sulphate of zinc in water.

OPIUM OR MORPHIA.

It is rarely used by professional poisoners. 4 or 5 grains may cause death.

Symptoms :—At first slight excitement of an agreeable nature which is soon followed by head-ache, weariness, diminution of sensibility ; contraction of the pupils (which become widely dilated towards the end); giddiness and drowsiness which gradually deepens into coma. Eyes are half-shut ; muscles relaxed ; lower jaw falls ; face and lips become pale. The skin is bathed in perspiration and cold to the touch ; respiration gets slow and irregular ; vomiting and even diarrhœa are sometimes present. There may be odour of opium present in the breath and vomited matter, and this will distinguish opium poisoning from acute alcoholism for which it may sometimes be mistaken.

First aid:—Keep the poisoned person walking about ; flap him with a wet towel, shout at him, pinch him and rouse him by all means. Pour alternately cold and warm water over the head from a height, drying him in the interval, but no cold water when there is coldness of skin or collapse. Induce vomiting with a tablespoonful of mustard powder in water or 20 grains of sulphate of zinc in water. Permanganate of Potassium (10 grains dissolved in a pint of water) may be used internally, repeating the dose in half an hour, if necessary. Artificial respiration if there is coma.

CHLOROFORM.

It is used in the form of vapour by criminals to facilitate robbery ; very rarely administered internally. Four drachms may prove fatal.

It should be noted that chloroform vapour does not produce immediate insensibility and it is therefore difficult to drug a person against his will or when he is sleeping. Cases of alleged robbery by using chloroform should therefore be very carefully scrutinized with a view to see if the circumstances were such as would make it likely that the victim was overpowered with a considerable amount of force. Marks of struggle

or violence should be sought for on the person of the victim as well as of the offender.

Symptoms:—(a) When inhaled:—Excitement with flushing of face ; contracted pupils and delirium, succeeded by a stage of complete loss of sensibility which is followed by a stage of paralysis Respiration becomes gradually slower and heart's action feebler till it is totally arrested.

(b) When swallowed:—Smell in breath ; burning pain in throat and stomach ; vomiting and convulsions as in alcohol poisoning ; dilated pupils ; staggering gait ; snoring ; insensibility deepening into coma.

First aid :—(a) When inhaled :—Loosen every thing about the chest and commence artificial respiration at once, if necessary ; flap face and chest with wet towel ; pull the tongue out and see that there is no obstruction to respiration ; pour alternately cold and warm water on chest and head ; let the head be at a lower level than the rest of the body.

(b) When swallowed :—Flick the face with wet towel and rouse him by all means ; cocoanut oil or ghee will relieve the burning pain ; induce vomiting with mustard (one table-spoonful) or sulphate of zinc (20 grains) in water.

There may be cases in which death occurs from swallowing chloroform, but no presence of the poison is detected in the viscera as chloroform may be decomposed in the body or ma escape by volatilization.

COCAINE.

A pleasing intoxicant or stimulant, usually taken with *pan* and may be very easily used in drugging persons (such as prostitutes) who take it habitually in small doses. Difficult to drug those who do not usually take it. Ten grains of the hydrochlorate swallowed may cause death.

Symptoms :—First stimulates and then paralyses the nerve

centres of the brain ; next, slows the heart and paralyses respiration ; temperature rises and convulsions may occur.

First aid :—Administer stimulants, such as brandy ; artificial respiration if necessary.

ALCOHOL.

Alcoholic poisoning is not usually resorted to by professional criminals, though other poisons, such as Datura, are often administered with wine. Water-free alcohol is seldom met with, the nearest approach to it being Rectified Spirit. The following is the percentage of alcohol in common drinks :—Brandy and Rum 53, Whisky 53-54, Gin 51, Port 20-25, Sherry 15-19, Burgandy 13-14, Claret 10-17, Hock 8-10, Strong Ale 6, Stout 6, Porter 4, Small Beer 1.

Symptoms of acute poisoning :—Face usually flushed ; pupils dilated (generally) ; giddiness ; tottering gait ; vacant expression ; breath alcoholic ; vomiting ; skin covered with sweat ; (later) :—convulsions ; stupor ; coma and death. The symptoms may sometimes be confounded with apoplexy or opium poisoning. In opium poisoning the face is usually pale, while in alcoholic poisoning it is flushed. Odour of breath in each case is a sure guide.

First aid :—If insensible, rouse him in every way, make him walk, flap him with wet end of towel, shout at him, pinch him. Pour cold water on head from a height, or hot and cold water alternately (but no cold water when there is collapse). Induce vomiting by powdered mustard (one tablespoonful) or sulphate of zinc (20 grains) in water. Hold ammonia to the nostrils. Give a pint of hot strong coffee. (See also the first aid under 'Datura' which may be mixed with alcohol, specially when prostitutes are drugged).

DATURA.

It is administerd in the majority of professional drugging

cases. All parts of the plant are poisonous, specially the seeds which are chiefly used by criminals. Leaves are also used in some cases, either mixed with vegetables or a strong decoction of them administered in curry or some highly flavoured article of food. Datura has a bitter taste which it imparts to the food, with which it is mixed. It contains the poisonous alkaloid 'Daturine' which is considered to be the same as 'Atropine.'

Datura is known to have been administered by professional criminals in the following forms :—

Powdered seeds (also decoction of the plant in some cases) mixed with sweet-meats as *prosad* ; with *dal*, *goor* and *puri*, *atta*, *sarbat*, *dahi*, *halua*, salt (for cooking purposes), spices, betel, tamarind *chatni*, sugar (pretending it to be *sinni*), also in wine (for drugging prostitutes), milk, cream, medicine, as well as in *ganja* offered for smoking.

A hollow pestle is often used by poisoners, the cavity of which contains powdered datura seeds, so that when it is inverted and used in pounding spices etc. the poison is introduced without raising any suspicion. Two grains of the powder may cause death.

Symptoms :—(Usually appear in 15 minutes and the poisoned man does not recollect any thing that happens afterwards). Dryness of the throat ; giddiness ; staggering ; flushing of the face ; delirium ; dilated pupils ; some times vomiting (look for seeds in vomited matter) ; (later) :—difficult swallowing ; voice changed and articulation indistinct ; vision disordered (in some cases double vision) ; restlessness ; incoherent talk or muttering ; often going through various ludicrous movements, such as catching at imaginary objects or pulling imaginary threads out of fingers' ends. These are succeeded by a stage of soper which may deepen into coma, some times accompanied with convulsions. In case of recovery the stage of soper is succeeded by another fit of delirium similar to that in the first stage.

First aid :—Rouse the man by flicking with a wet towel ; induce vomiting by giving mustard powder (one tablespoonful) or sulphate of zinc (20 grains) in water ; stomach may be washed with tea ; give stimulants such as brandy ; mustard to the calves of the legs ; hot-water bottles to the feet and cold water on head, if necssary.

BELLADONA.

It is used by professional criminals, either by itself or with Datura, in bread or other food. Its use, however, is very rare.

Symptoms :—Heat and dryness of mouth ; suppression of saliva ; difficulty in swallowing ; thirst ; face flushed ; eyes sparkling, pupils widely dilated and insensible to light ; indistinct or double vision ; excitement ; staggering gait ; delirium and hallucinations like those caused by Datura poisoning. Skin dry with rash like scarlet fever. Majority of cases recover where the poison is not taken in big quantity.

First aid:—Rouse the man by flicking with a wet towel : alternate hot and cold water on head ; mustard to the calves of legs ; hot water bottles to the feet. Induce vomiting by mustard (one tablespoonful) or sulphate of zinc (20 grains) in water. Artificial respiration if necessary. Stimulants such as brandy.

INDIAN HEMP (CANNABIS)

If it is found in four forms :—(1) *Bhang* or *Siddhi* (2) *Ganja*, (3) *Charas*, (4) *Majum* (sweet prepared with hemp). Largely used for the purpose of facilitating theft or robbery, but very rarely for homicidal purposes. Hemp is usually administered with tobacco, either in pipe or hooka. Datura is some times used with hemp in preparing *Majum*, also in the smoking offered by criminals.

Symptoms :—Excitement attended with hallucinations ,

laughing ; singing ; talking ; sensation of floating up into the air ; delirium. This is succeeded by a stage of narcotism usually with dilated pupils.

First did :—Rouse the man in the way indicated under the other poisons, and induce vomiting in the case of poisoning by *Bhang* or *Majum* ; pour cold water on head, except when there is collapse.

CHAPTER XI.

CRIMINAL TRIBES.

(Arranged in Alphabetical Order).

(1) BAGDIS.

The Bagdis appear to be an aboriginal tribe of Bengal and are found chiefly in the Burdwan and Presidency Divisions. As a class they are not criminal, but are on the other hand a very useful community as most of them work as day labourers or nomadic cultivators and are also employed as Choukidars under Government or Paiks and Sardars under Zaminders. They also earn their livelihood by fishing, and a section of them known as *Dulias* carry planquins.

The Tetulia Bagdis of the Burdwan and Presidency Divisions were in olden days skilful *lathials* and used to be employed as such by Zaminders or hired for the purpose of committing acts of violence. They were also notorious **dacoits** and robbers and expert in scaling walls. The most criminal Bagdis are at present found in the Sudder Sub-Division of the Burdwan district, Diamond Harbour Sub-division of the 24 Perganas and Arambagh Sub-division of the Hugli district. The Bagdis of Burdwan and Hugli districts associate with Metias (another aboriginal class similar to Bagdis in many respects) in committing thefts and dacoities and those of the Diamond Harbour Sub-division co-operate with Keoras and Podes, two notorious criminal classes of the 24 Perganas district, besides Mohamedans.

(2). BAID MUSALMANS.

They are itinerant **swindlers**, their ostensible profession being to cure various diseases. Though they are Musalmans by religion they sometimes assume the garb of Ramanandi Sadhus in their criminal expeditions and pass off as Hindus. In this guise they may be mistaken for Bauriyas as both these classes assume the surname of "Das."

When the Baid spots out a victim he approaches him with an *offer to cure some disease* free of charge. In course of con-

versation he leads the dupe to believe that he can *turn a base metal into a higher one* and *double the quantity of valuables* placed in his charge. In some cases the belief is confirmed by the performance of some operations in the presence of the dupe in course of which base metals produced by the dupe are replaced by sleight of hand and higher metals returned. When confidence is thus secured the swindler fixes a day on which he visits the dupe's house and induces him to put all his valuables into a pot on which some mystic ceremonies are performed from day to day. One morning the dupe finds that the Sadhu has vanished with the contents of the pot.

The Baids generally select men of position and wealth, men who would ordinarily avoid complaining before the police for fear of ridicule. They sometimes offer, at the first interview with a likely victim, powder of ashes saying that it possesses alchemistic powers and often verify their statements with practical demonstrations.

The field of operation of these people extends over the whole of India. In Bengal they have been known to have taken part in cases in the 24 Perganas, Pabna, Bogra, Nadia, Murshidabad and Bankura disiricts.

(3). BANFARS.

Banfars are found principally in Monghyr and Patna districts and are reckoned to be a sub-caste of Mallahs and Gonrihs. They are generally boat-men and fisher-men by occupation and come to the lower districts of Bengal to *work in boats*. They are employed in large numbers in the green boats, light boats, and *dinghis* plying on the Hoogly. Working ostensibly as *mallahs* they take advantage of every opportunity to commit **theft from cargo boats**. They prowl round such boats and steal from them while the crew are asleep. They use force when necessary and remove the cargo to their own boats. The records concerning their criminality show that **river dacoity** is in fact their favourite form of crime and their field of operation extends over Calcutta, Howrah, Hoogly and 24 Perganas. They loot all sorts of cargo, such as ghee, sugar, flour, rice, oil, mangoes, jute etc. and dispose of the stolen property either to regular receivers or sell them in the market.

They *ask for tobacco or fire* when they come up to a boat they intend to rob. They have also been known to *personate*

Police or Customs officers and stop boats on plea of searching them. They also abet thefts of cargo by dishonest *manjhis* by taking delivery of the stolen articles from the cargo boats into their own boats and carrying them to places indicated by the Manjhis.

(4). BARWARS.

The term "Barwar" is not a caste or racial appellation but denotes a thief. People of any caste who commit crime in the way peculiar to the Barwars are admitted to the tribe. Most of the Barwars belong to the *Lodh* caste and have their settlement in the Hardoi district. The other Barwars are generally Brahmins, Ahirs and Kurmis and have settled mostly in the Gonda district. Besides these there are Barwar settlements in Sultanpore, Saharanpur, Sitapur, Laksmipur, Kheri, Gorakhpur, Basti and Azimgarh districts.

As people of various castes constitute this criminal class there can ordinarily be nothing distinctive in the personal appearance of a Barwar. Most of them, however, look like up-country coolies. Their usual costume consists of *dhoti*, *kurta*, *mirzai*, a cap and a *chadar* thrown round the body. The *chadar* is used for committing theft and concealing stolen property.

The Barwars of Gonda, Hardoi and Sultanpur districts are inveterate criminals, their field of operation extending over the whole of India. They come down to Bengal in large parties and are most frequently found at Goalando, Narainganj, Jagannathganj, Chandpur. Damukdia, Sirajganj, Lalgolaghat, Ranaghat, Kharagpur and Khulna. They commit theft at **fairs, railway stations, steamer and bathing ghats and places of pilgrimage**. They would usually select a quiet spot for their head quarters from where they would go out in batches of two or three and travel long distances in order to avoid suspicion. They would quietly take their seats in the waiting sheds of railway stations, close to any person whom they spot out as a suitable victim. A favourite method of a Barwar is to mark some article he intends to steal and spread out a newly washed *chadar* to dry, covering with it the article selected. After a few minutes the *chadar* is picked up and with it the article as well. They are also expert **running train thieves**, stealing luggages of sleeping or careless passengers. At bathing ghats they steal the clothes and other articles left by the bathers on the ghats. When they visit a fair, one of them

poses as a Sanyasi, Brahmin, merchant or *mahajan* and in that guise gives shelter to the rest of the gang. When arrested they conceal their real name and residence and, giving themselves out as Kurmis or Tamolis, say that they have come from the Nepal frontier. When arrested at any other place they say that they have just come from their native place and have no knowledge of the locality where they are found. When arrested in a batch, they would never admit the existence of any connection or relationship among themselves.

When questioned about his native village, a Barwar would often give the name of a hamlet attached to the village and not of the main village itself. They should therefore be particularly questioned about the main village, or the *Lambari* village as it is called, and the same should be noted in the Verification Roll. Finger impressions of arrested Barwars should be immediately sent to Calcutta, Allahabad and Simla bureaux and their photographs to the Superintendents of Police, Hordoi, Gonda and Sultanpur. A case under section 109 Criminal Procedure Code should usually be started against an arrested Barwar, particulars about him being at the same time sent to the Police of his alleged native district as he may be wanted there for trial under the Criminal Tribes Act. Proceedings under section 109 should be kept postponed till the receipt of reply from the Police.

Boys between 7 and 14 years of age and women often travel with Barwar gangs. The boys do the actual thieving in many cases, and if one is caught while stealing the owner of the property generally lets him off with a beating, no suspicion falling on the gang. The women go about in big fairs decently dressed and steal the articles of pilgrims when they find them busy with their *pujahs*. In the guise of Brahmin women they visit also the houses of respectable men and commit theft whenever they find any opportunity.

Owing to strict watch by the Police the Barwars have given up the practice of carrying the stolen property to their native place, and dispose it of in the locality in which they commit the theft.

Barwars have a complete language of signs which they use in communicating with one another in crowds. When a Barwar has to call his confederate he would wave his cloth. If the confederates are close to him and he wants their help, he would place as many fingers on his own cheek as he wants

help from. If he wants a confederate to remove an article he would place the hand on his own neck.

All male members of the tribe over the age of 15 years residing in districts Gonda, Hardoi and Sultanpore have been declared under the Criminal Tribes Act (V. P. Governmet Notification No. 1250—VIII 158—17 dated the 1st. October 1913, as amended by Notification No. 1678 —VIII—158—17, dated the 26th. September 1913).

(5) BAURIYAS.

A class of inveterate criminals residing in Muzuffaranagore and Mirzapore Districts. They indulge in **burglary** and **theft** in various forms, including theft of goat and sheep, and **dacoity**. They go about in gangs like *sanyasis* or *Bairagis* and fix their settlement at a quiet place at some distance from a town or village. From there they go out on plea of begging or selling musk, *salammisri*, or medicine and mark the houses they intend to exploit. Like Sanyasis they decorate their forehead with ashes and *gopichandan* and use plenty of wooden and *rudrakha* beads. They carry tongs and *kamandalu* and some of them shave their heads. They call themselves "Dass" and "Gir" and sometimes "Lall" and "Singh" as well. Though they do their best to give themselves the look of Sanyasis, there are various points from which a Bauriya gang may be differentiated from a real Sanyasi gang. Some of the points are given below :—

(1) Bauriya gangs make long halts at places even where there is nothing to attract Sanyasis.

(2) A gang of real Sanyasis is composed of people belonging to varions castes or localities, but a Bauriya gang, as it consists of men belonging to the same tribe, will show striking similarity as to the appearance, language and manners of the members. Unlike the former, one among a Bauriya gang cooks for the whole gang and they drink liquor and take meat.

(3) Bauriyas keep dogs with them, but Sanyasis do not.

(4) Sanyasis prefer to stay within villages and towns, whereas Bauriyas will select secluded places, such as ruined temples or jungles, as far away from human habitation as possible. When the latter intend to prolong their halt they construct small huts or take them on rent. They do not generally use *palls*.

(5) Women belonging to Bairagi or similar wandering

gangs do not use costly ornaments, but Bauriya women use plenty of silver ornaments which indicates that they are not really beggars.

(6). Bauriya women tattoo their left nose thus .·. and the corner of each eye thus X:, besides these they wear tattoo marks under the lip or the chin. The upper lobe of each ear has four borings in a line.

In dark nights they go out in batches of 5 or 6 and use the Railway, whenever convenient. They prefer however to travel by road while they return. They themselves make a previous inspection of the house selected and do not depend on any local man for the supply of information. When they come near the house they put off their usual garb and wear *lengutis*. Their usual mode of *Sindh* is *bagli* (cutting hole near the side bolt), but they also enter by cutting holes under door-frames or in walls or by lifting the latches of windows. Three men generally enter the house, while two keep watch outside. They remove ornaments from the persons of sleeping females and children, and while one of the gang does it, the other two hold *Inthis* over the head of any male sleepling in the room and strike him if he gets up. They steal all sorts of articles such as ornaments, utensils, clothes, rice, spices and even toddy or liquor. When they steal goat or sheep they leave behind the skin and carry away only the flesh.

Bauriyas have several rites and customs peculiar to themselves. They recite incantations and sprinkle grains of wheat on the ground, a form of charm believed by them to bring good luck. They carry with them a kind of *Devata* (deity) which is made up of grains of wheat soaked in ghee, peacock's feather and a small bell, the whole wrapped in two pieces of cloth which contain marks of fingers dipped in goat's blood. The whole bundle is again wrapped in a piece of red cloth. The housebreaking instrument used by them is like the handle of a *chamar* and is carried among cooking utensils or used as a peg to tie ponies and dogs. This instrument is called *gyan*. A Bauriya would never object to his house-search, but while the search is in progress every attempt will be made to divert the attention of the officers making the search. A woman would feign a devotional fit and commence dancing, while the boys or other inmates of the house would take the opportunity to remove the stolen property. As a rule they keep the stolen property, execept cash, buried at some dis-

tance from their place of abode. The women go and dig them up after a few days and they are passed on to receivers. They find out one or two such receivers whenever they halt at a place for a comparatively long time. They keep silver ornaments and sometimes utensils for their own use. Lots of stolen property may be found if a gang is searched while it is on the move.

All male members of the tribe over the age of 15 years residing in districts Muzaffarnagore and Shaharanpur have been declared under the Criminal Tribes Act, vide Government Notification No. 1238-VIII-158-6, dated the 1st October 1913. Section 10 (b) has been applied to those who have been, or shall be, convicted of a non-bailable offence or bound down under section 118 Cr. Pro. Code.

(6) BEDIYAS OF JESSORE.

The word "Bediya" means a hunter. There are several classes of people in Bengal, both Hindus and Mohamedans, known as "Bediyas." The Bediyas of Jessore are a small tribe of about four hundred adults residing in a few villages in the jurisdiction of Police-stations Gaighata, Sarsa, Bongaon and Jikhergacha in the Jessore district, and Bassirhat in the 24 Perganas. They worship the goddess Kali and perform *Sradh* ceremony like Hindus, but at the same time they have among them some Mohamedan customs such as *Nika* marriage. They have no regular tribal occupation. The males work as labourers and the females and children make mats from the leaves of date palm.

Burglary and **theft** are the forms of crime ordinarily committed by the Bediyas of Jessore. A Bediya would not, as a rule, use violence in committing crime or take part in a dacoity. *Theft of grain* is what he mostly indulges in. He is also an expert in cutting *Sindhs*, specially in mat-walls. He would not keep the stolen property in his house but would pass it on quickly to the receivers, quite a large number of whom live around every Bediya settlement. They have receivers in and around Calcutta as well where they would almost invariably go when they want to evade the eyes of the Police of their native place. Their field of operation is in most cases the vicinity of their own settlements but some of them have convictions in Nadia, Khulna, Hoogly, 24 Perganas and Calcutta.

Under Bengal Government Notification No 4048 P, dated the 14th March 1916, all male members of the tribe who have been, or may be, convicted of non-bailable offences or in cases under sections 109 and 110, Cri-

minal Procedure Code, have been declared under the Criminal Tribes Act. Section 10 (a) and (b) has been applied to this tribe

(7) BHADAKS.

This criminal class is believed to be a branch of Bauriahs and, like the latter, they wander about in the guise of Sanyasis or Bairagis, and add such surnames as "Das," "Gir" or "Puri" to their names when in that guise. At other times they pose as cattle-dealers or ordinary *grihasthas* and travel in gangs from place to place. While travelling by rail the members occupy different compartments and carry cooked food with themselves. Like Bauriahs they keep grains of wheat and *joari* with which they practise a process as an omen before starting out on a criminal expedition.

Bhadaks are expert **burglars** and usually effect entrance by cutting *bagli sindh.* They steal only cash and ornaments, and if on any occasion they steal clothes, they sew them up inside their beddings. Small ornaments are also kept sewn up in shoes.

The Bhadaks of Muttra, Saharanpur, Badaun and Kheri districts (all male members over the age of 15 years) have been declared under the Criminal Tribes Act. vide Government Order No. 1246-VIII 158 10, dated the 1st October 1913. Section 10 (b) has been applied to those registered members of the tribe who have been, or shall be, imprisened in jail in consequence of a sentence of imprisonment in a non bailable offence or in pursuance of an order under section 118 of the Cr. P. Code.

(8) BHAGRIS.

A criminal class belonging to Gujrat and Kathiwar in the Bombay Presidency. They wander about in gangs together with their women and children and visit almost every part of India. They are expert **thieves**, **pickpockets**, and **burglars** usually effecting entrance by cutting *bagli sindh.* The females are also expert criminals and steal ornaments from the person of children.

Besides theft and burglary they practise **swindling** in various forms, one of their usual methods being to *sell brass ornaments and beads as gold.* Like Mogheya Domes, bead-swindling is practised more by the females than males. Another favourite method with the Bhagris is to decoy a person to a solitary place by offering to sell ornaments to him at a

very low price, and when the transaction is being settled, three or four members of the gang approach all on a sudden and pose as policemen ; in the confusion that ensues the victim gets puzzled and either delivers to the others whatever he has with him or is robbed and driven away on some pretext or other.

(9) BHAMPTAS

Bhamptas belong to the Bombay Presidency, residing in the districts of Satara, Solapur, Khandesh, Poona, Ahmednagar, Nasik, Belgaum and Bijapur. As a community they are Hindoos, worshipping Kali invariably before starting on a criminal expedition, but they admit into their ranks various Hindoo castes and even Mohamedans and Parsis. They dress themselves like *Bhadraloke* passengers and speak in Telegu. When arrested they conceal their real name and residence.

Bhamptas are expert **thieves** and **pickpockets** and carry on their operation in crowded places, such as fairs, places of pilgrimage and railway stations. They are also expert **running train thieves**. They are very clever at disguises and often travel in trains as second class passengers in the guise of Maharatta traders or Railway contractors. They also dress like Marwaris and men of the United Provinces. They have also been known to wear European dress. The men sometimes disguise themselves as women, when a female is to be robbed, and change their dress immediately after the theft. They commit theft from all classes of compartments, and at the first stop after the theft either change compartments or proceed back by a return train.

A Bhampta gang usually consists of 8 to 10 persons, including one or two women and children. The party splits up on reaching the locality selected for operation, having arranged a place for reassembling. They travel in trains usually by night and steal articles belonging to passengers sleeping in the same compartment. They would often keep a sharp look out at a railway station and follow a likely victim into the train, taking a ticket of the same class and in the same direction. While in the train they would keep the passengers engaged by cheerful conversations, while one of them would collect whatever he can conveniently lay his hands on and get down at the next stopping station. One of their favourite methods is to *lie down on the floor of the compart-*

ment, ostensibly to make room on the seat for others, and cover himself with a *chadar*. Being thus screened he lays his hands on leather or canvas bags or bundles and rips them open with a small curved knife or piece of glass which he carries in his mouth or pocket. He would also open locked trunks with a chisel without attracting any attention and remove valuables therefrom. The property is usually passed to a confederate in the next compartment through the bars under the benches, or thrown out of the window at pre-arranged spots Sometimes they throw out heavy articles, such as trunks, and jump out of running trains. Bhampta women too are expert thieves and commit theft in female compartments. They wear Marhatta dress and tattoo their faces and hands. If a Bhampta is arrested before he has time to alight from the train his confederates would aid his escape by creating a confusion and throwing suspicion on other passengers. They would sometimes volunteer to hold the prisoner till a Police-man is found, and let him go at the first opportunity.

A Bhampta would usually carry with him false keys, a sharp knife, needle and thread (to re-sew bags), a steel chisel and a steel *Sorota* to cut through brass or iron hasps. As a rule they steal only cash and jewellery, and occasionally valuable clothes. Cash is remitted to their homes by money-order or kept buried till the gang moves. Jewellery is melted at once and clothes are sent home by post

In Bengal the places most frequented by Bhamptas are Howrah, Raniganj, Kharagpore, Ranaghat, Kushthea, Goalando, Dacca and Narainganj. The Bhamptas residing in Ahmednagar, Khandesh. Nasik, Poona, Satara, Solapur, Dharwar, Belgaum and Bijapur Districts have been declared as a Criminal Tribe by Bombay Government Notification No 3413, dated 3rd May 1912, and No. 3691, dated 9th May 1913.

(10) BHATRAS.

Most of these people are Sikhs and had their original residence in the district of Bijnore in the United Provinces and Hoshiarpur and Sialkote in the Punjab from where they gradually got scattered in various parts of India. In Bengal they are found in Calcutta and Howrah.

Bhatras wander in gangs from place to place and the women of a section of them hawk cheap articles for which they are also called "Banjaras". The ostensible profession of most of the Bhatras is begging, and for this purpose they

visit big places of pilgrimage on the Ganges and the Jamuna. They indulge in drinking and gambling and move about in gangs of six or seven persons, all the gangs assembling at a fixed place before they return home. While in a **swindling** expedition they dress themselves like *Sadhus* or *Bairagis* and earn money by pretending to be astrologers or representing themselves as officers of temples or *chelas* of Mohunts and asking for alms for the construction or repair of shrines. Sometimes they take with themselves grown up girls and realise money from simple people by saying that they are to meet the expenses of their marriage.

The Bhatras of Jhammat and Chak Lala villages in Sialkote have been restricted under section 12 of the Criminal Tribes Act (Notification No. 8310, dated the 4th April, 1917).

(11) BHUMIJ.

Bhumijes are found chiefly in the districts of Manbhoom, Bankura and Midnapore. Though they belong to the same stock as Mundas, they have adopted the language and customs of the low class Hindus of these districts. Their tribal occupation is cultivation, those who have no lands of their own working as day labourers. Many of them are now working as coolies in the tea gardens of Assam. The Bhumijes of the Midnapore district are not so much criminal, but those living in the jurisdiction of police-stations Khatra, Raipur, Chhatna and Indpur in Bankura and Bandwan, Manbazar, Hura, Purulia, Barabazar and Gourangdi in Manbhum are addicted to all forms of offence against property and **dacoity** in particular. Their criminal history dates so far back as 1867, and successive efforts had to be made since then to break up their organizations some of which were considerably big. A large number of them were prosecuted in batches under Section 110 Cr P. Code, and there were gang cases under section 400 I. P. C., both in Manbhum and Bankura.

The Bhumij is notorious for his dacoity and the great cruelty with which he commits it. From the very commencement of the attack he will mercilessly beat the inmates of the house and would sometimes cause death. A special feature of their dacoities is to *throw stones when the attack is begun* or when they intend to drive away the villagers who assemble. While committing dacoities they carry *lathies*, spears, *tangies* (axes) and swords, and in some cases of Manbhum they have been known to carry firearms as well. Sometimes they wear masks

to conceal their faces. Their dacoities are always carefully planned and they collect accurate informations from beforehand through their informers or scouts, the latter being in many cases old Brahmins with a look of innocence. Their field of operation extends to Midnapore, Hugli and Burdwan, besides Manbhum and Bankura, and they have been suspected in some recent cases of the 24 Perganas.

The criminal history of Bankura and Manbhum shows that there has been an outbreak of dacoities at an interval of 5 or 6 years, and this is due probably to the fact that when one batch of Bhumijes is successfully dealt with it takes a younger batch about 5 years to attain the proper age and training for crime.

Three Bhumij gangs of Bankura and five of Manbhum have been brought under the operation of the C. T. Act. Section 10 (b) has been applied to all these gangs.

(12) BHURS.

Bhurs are found chiefly in the districts of Azamgarh, Ballia. Benares, Fyzabad, Gazipore, Gorakhpur, Jaunpore and Mirzapore of the United Provinces as well as in the districts of Champaran, Saran and Shahabad in Behar. They come to Bengal in large numbers and work in mills and similar other concerns as labourers. They also work as coolies on almost all the Railways of Bengal and are employed in large numbers in the Bengal coal fields.

The Bhurs profess to be Hindus and worship Shiva and Kali. Widow remarriage is prevalent among them. They indulge freely in liquor, and an offering of liquor to deities is always necessary in their religious ceremonies. Though many of them work as honest labourers, the whole tribe has a criminal tendency and in many cases the ostensible employment gives them a cover to commit crime. They work during daytime and commit crime at night. The Bhurs of the following places are particularly criminal :—

Police-stations Mirzamurad, Boregaon, Cholapur, Chambepur, Sikrole (Orderly Bazar), Rohania Bhelupur, Fulpur, Balua in the Benares district; police-stations Boodhi in Mirzapur district, and Raipur and Kerakat in Jaunpur district.

The Bhurs commit **theft** in every form including pocket-picking and shop-pilfering as well as **burglary, robbery** and **dacoity**. In committing burglary they cut *Sindhs* or scale walls and let in their accomplices, They have also been

known in many cases to operate singly. It is however for their organized robberies and dacoities that the Bhurs are specially notorious. They formed from time to time big gangs in the coal fields of Ranigunj and Asansole as well in the mill-areas of the 24 Perganas district (including Calcutta) and committed dacoities in the districts of Burdwan, Hooghly, Midnapur, Howrah and 24 Perganas. There is no special feature in their dacoities except that entrance is usually effected by scaling the wall and opening the main door, and axes are often used to break open doors and receptacles of property. In some cases of colliery districts they used dynamite to frighten the local people. When they move in gangs they sometimes carry baskets and measuring rods to pass off as honest coolies. The females are not known to be criminal.

The Bhurs of Azamgarh, Benares, Fyzabad and Jaunpore districts in the United Provinces have been declared under the Criminal Tribes Act by Notification No. 1334—viii, dated the 9th July 1917. Section 10 (b) has been applied to those registered members who have been in jail subsequent to 1st January 1908 in consequence of a conviction for a non-bailable offence or who have been bound down for good behaviour under Section 118 Cr. P. Code subsequent to 1st January 1908.

All Bhurs residing in the Presidency of Bengal who have been, or may hereafter be, convicted of any non-bailable offence or who have been, or may hereafter be, bound down for good behaviour have been declared under the Criminal Tribes Act by Notification No. 8 P. dated the 4th January 1915. Section 10 (b) has been applied to this tribe.

(13) BYADHS.

The Byadhs (lit, "bird-catcher") are found in the districts of Jessore, Nadia, 24 Perganas and Midnapore. They profess to be Hindus and resemble ordinary low-class Bengalees in appearance. They wander from place to place with their women and children, their ostensible profession being to catch birds with the *satnola* and make bamboo baskets. They also call themselves as Paikmaras and sometimes try to pass off as Bansfor Domes or Kururias.

The Byadhs, both male and female, are expert **swindlers**. They camp at one place for a sufficiently long time so as to gain the confidence of some of the villagers whom they eventually swindle. The following are their principal methods of swindling :—

(1). The men induce the dupe to believe that they are in

possession of gold mohurs which they found while dismantling a building. They produce a clod of earth shaped like a *handi* saying that it contains the mohurs and pawn or sell it to the victim in exchange for money. The transaction is always held in a solitary place and the offender escapes as soon as he receives the money. If the victim gets scent of the swindle and tries to detain the man, his accomplice appear from hiding and rescue him.

(2). They practise also the doubling trick, *i. e.* inducing the dupe to put all his valuables in a *handi* saying they would be doubled in course of some mystic operations performed on them. The *handi* is then cleverly replaced by a similar one.

(3). The women induce village women to part with ornaments in exchange for *Laksmir Bhar*, or the jar of the Goddess of wealth,which is described as containing inexhaustible treasure (Vide page 196.)

(14). CHAIN CHAMARS.

Chain Chamars belong chiefly to Gazipore, Jaunpore and Ballia districts of the United Provinces. They resemble Chain Mallas in many respects, though their criminality and field of operation are not so extensive as those of the latter. They associate with Chain Mallas and Palwar Dusadhs in committing crime and confine themselves chiefly to **petty thieving** One of their favourite methods is to obtain shelter as a mendicant or wayfarer in the house in which they intend to commit theft. Their women are expert **pick-pockets** and **swindlers** and they employ boys to assist them in committing theft. In Bengal they have been known to have committed crime chiefly in Howrah, 24 Perganas and Murshidabad districts.

All the Chain Chamars in the Gazipore district (all males over the age of 15 years) were declared under the Criminal Tribes Act in 1913 (Notification No. 1274-VIII-158-4 dated the 1st October 1913, as amended by Notification No. 173-VIII-158-4 dated the 29th January 1915), and such Chain Chamars of Jaunpore district as had been convicted of non-bailable offences or ordered to furnish security under section 118, Cr. P. Code, were declared under the Criminal Tribes Act by Government Notification No. 1274-VIII-158-4 and No. 6-VIII-158, dated the 3rd January 1914. In the case of the Jaunpore Chain Chamars Section 10 (b) has been applied to male members only.

(15) CHAIN MALLAS.

Chain Mallas are believed to be a branch of Mallas and reside principally in the districts of Mirzapur, Jaunpur, Ghazi-

pur, Gorakhpur, Ballia and Azamgarh. Those who frequent Bengal belong mostly to Ballia, Gorakhpur, and Jaunpur. The Chain Mallas of Police-station Ubhaon in the district of Ballia and Mussala in the district of Gorakhpur, and those who have recently settled in Agra, Muttra and Aligarh districts are the most dangerous criminals.

They visit almost every part of Bengal, specially East Bengal, and the districts of Rajshahi, Pabna, Rungpore and Dacca are their most favourite haunts. They carry on their operations in Bengal between September and the *Holi* festival, and again between the end of March and the beginning of the rains. **Pocket-picking** is what they mostly indulge in, using a little knife or sharp piece of glass for cutting pockets, bags or knots in which country people tie up their money. Besides this they commit **theft** in various forms including snatching of ornaments from the persons of women and children. Their boys are also expert thieves and pick-pockets. Chain mallas usually *carry on their operations in Melas, bathing ghats* or such other places where a large number of people assemble. Sometimes they put on decent dress and join a marriage party and commit theft whenever they find an opportunity. Chain mallas do not commit house-breaking as a rule, and their method of crime is similar to that of the Barwars, Sanaurhiyas and Bhamptas. C. W. C. Plowden Esq. C. I. E., describes their method as such and writes as follows :—

"So far as I have been able to observe the habits of the Chain Mallas who visit Bengal, they restrict themselves to picking pockets and usually act alone. They arrive in batches at some central spot, such as Natore, Narayanganj or Serajganj, and then split up, visiting *hats* and places where a crowd is likely to collect. When arrested, they invariably give a false name and address and pretend to be half-witted. They frequently describe themselves as Noonias, and there is, in fact, a sub-caste of Noonias who bear the name Chain. When wandering about alone they sleep in the open under a tree. In one case, in which a Chain Malla was arrested, it was ascertained that he had slept under a tree just out-side the town. On digging up the place a bag was found containing some rupees and small pieces of silver. Although these people, when in Bengal, appear to act singly, it is important to remember that the arrest of a Chain Malla indicates the

presence of several others, and therefore immediately a Chain Malla is arrested no time should be lost in conveying the information to all Police-stations within the district, as well as to neighbouring districts and Government Railway Police, and a combined search should be made for the rest of the gang."

The **Mallas** of Muttra, Agra and Aligarh have the same criminal methods as Chain Mallas, but they have a different field of operation as their convictions are found to be in Calcutta and the surrounding districts, besides the United Provinces. They often pass themselves off as *Thakurs* and *Benias*, and, like the Chain Mallas, give false names and addresses when arrested.

In 1914 the Chain Mallas of Bulandshair, Ballia and Muttra districts and those residing in certain villages in Agra and Gorakhpur districts,—(all males over the age of 15 years)—as well as certain members (mentioned in the Notifications) residing in Aligarh and Mirzapur districts were declared under the C. T. Act.

(16) CHAKAI DUSADHS.

Chakai Dusadhs take their name from Chakai in the Jamui Sub-Division of the Monghyr District. C. W. C. Plowden, Esq. C. I. E., is of opinion that they are a distinct class from the other Dusadhs of Behar and are Bauriyas who have settled in the locality and call themselves Dusadhs. Chakai Dusadhs come in large numbers to the colliery districts of Bengal where they work as miners and commit **thefts, burglaries** and sometimes **dacoities**, in the neighbourhood. As a rule they do not resort to violence while committing crime and prefer theft and burglary to dacoity. While committing crime in gangs, they assemble after nightfall either in the house of one of the members or in the jungles.

Chakai Dusadhs have their settlements in Monghyr, Hazaribagh, Santal Parganas and Bhagalpur districts. All of those residing in these districts have been declared as a Criminal Tribe by Notification No. 2369 P. dated the 21st June 1915. Section 10 (b) has been applied to them.

(17). CHUPPERBUNDS.

Chupperbunds are notorious **coiners** and belong principally to the Bijapur district of the Bombay Presidency. They are mahomedans and their names always terminate with "Sha". They visit almost every part of India in course of their criminal expeditions and go about in groups of from three to ten men in the guise of Mahomedan mendicants, dressing

themselves with salmon coloured Pugrees and beads. Sometimes they pass themselves off as Hindu mendicants. A gang would always have a "Khagda" or leader, a "Bhonder" or utterer and a "Handiwal" or boy. Women never accompany them in these expeditions.

Major Gunthrope gives in his. "Notes on Criminal Tribes" the following account of their process of counterfeiting and uttering coins :—

The impliments used are simple. A mould of earth, an iron spoon, a pair of pincers and a small knife constitute the lot. The mould is made of a kind of earth which is pounded very fine and worked to a proper consistency with water. A rupee is covered with this prepared earth and well pressed on all sides. A cut is then made through it going along the edge of the rupee and a small hole made in the side of the mould, wedge shaped, to admit of the melted metal being poured in. A mark is also made across the cut mentioned above to admit of the mould being correctly fixed when ready. The lump of clay is now wrapped over with several layers of rag. A thick coating of clay is put over this again and this whole lump is put in the fire. When the mould is considered sufficiently baked, the outer layer of the clay and the rags are removed, the mould opened and the rupee taken out, and it is complete. The two pieces are put together and melted substance (pewter or lead, or mixture of copper or *Kansa* and tin) poured in. The false rupee is taken out and perfected by the hand with the small knife. The manufacture is carried on generally in jungles or waste lands. These people possess always a leather bag, in which, on the march, they carry their coining implements, and in addition some of the fine earth, loose, and some white metal. When halted all the implements are buried in the neighbourhood of their resting place. The only time all their implements are with them is when on a journey from place to place.

"Counterfeit coin is carried in the lungotee worn by two or three of each gang The pockets for holding the rupees are attached to the inner side of the front part of the lungotee under the front flap and tied very tightly." (On the arrest of a Chupperbund the lungotee should be very carefully examined after taking it off altogether. Coins are also kept concealed in the cavity of the rectum or in the mouth ; medical examination is therefore advisable).

"The mode adopted for passing the counterfeit coin is al-

most invariably the same, the victims selected are generally women (preferably an old woman with defective eyesight as the counterfeit is often a very poor imitation). The Fakir, or one of the boys, says he has a number of coppers and is willing to give 17 or 18 annas for the rupee, and that, being strangers to the part of the country, they do not know the correct change. The offer is accepted. The coppers are counted out and the rupee is asked for. Taking it in his hand the man dexterously changes it, substituting a counterfeit, and at once says the rupee is bad and he cannot take it ; the victim, not suspecting anything, offers another which is also treated in the same way, and so on until no more genuine ones are remaining. Large fairs are much resorted to for the purpose, and it is curious how rarely they are detected.'

When arrested, a Chhupperbund would always conceal his real name and address. His finger-impressions should be sent to Poona and, if possible, his photograph to the Superintendent of Police, Bijapur. When the halting place of a gang of Chhupperbunds is intended to be searched the men should be handcuffed as soon as possible as they very cleverly do away with coins and coining materials even in the presence of the Police.

The Chhupperbunds of Bijapur district were proclaimed under the Criminal Tribes Act by Government Notification No. 5518, dated the 18th August 1916.

(18) CHHATRISGAR CHAMARS.

These Chamars come to Bengal in large numbers from Bilaspur and other places of the Chhatrisgar Division of the Central Provinces and work as labourers on Railways, brickfields, docks and under the Public Works Department. While in Bengal they indulge in various forms of crime and **house-breaking** in particular, and have also been known to commit **dacoities**. They are also expert **cattle-lifters** and **cattle-poisoners**.

They work in well-organised gangs and, while committing burglary each member is allowed a particular duty, such as breaking into a house, taking out boxes, keeping watch outside, and so forth. In committing burglary they use a round instrument with a sharp flat end. While in their criminal expeditions they *carry with them a sort of cloak made of threaded straw*, with the help of which they hide themselves in

a stack of straw or such other place in the event of an alarm. They use this cloak also in cattle-stealing, lying covered with it in a grazing field and gradually inducing the cattle they intend to steal to move to a safe distance.

In cattle-poisoning they use the *sutari*, which is a sort of poisonous spike prepared mainly from dried *karjani* seeds (see 'Cattle-poisoning' Chapter VI). They also cause the death of cattle by inserting poison into their *anus*.

One of their usual methods is to commit crime in the jurisdiction of a Police-station other than that in which they reside.

(19) DALERAS.

Daleras are believed to be a branch of 'Mallas' and are known by this name as they used formerly to make and sell *dalas* or baskets. Mr. Bramley however holds that they are a class of mixed 'Kahars' and are akin to Barwars as their method of committing theft resembles to a large extent that of the Barwars.

Daleras live mostly in Barriely, Meerut, Moradabad and Badaun districts as well as in the Rampur State. There is a regular settlement of them in village Gurgaon, P.S. Seroli, and if an up-country criminal gives out on his arrest that he is a resident of Pumipara (a hamlet of Gurgaon), it is to be understood that the man is a Dalera. His finger-print should at once be sent for search.

Daleras leave their homes in the beginning of October and return by the end of May. They go out on their criminal expeditions in batches of 8 or 10 persons and visit almost every province of India. Ordinarily they fix their settlement in an open field or under a tree at some distance from the place selected for criminal operation, speially a big fair or some other place where a large number of people assemble. The actual **thieving** is in most cases carried on by boys and, like Barwars, ordinarily during the day time. The adult males engage the victim in an interesting conversation while the boys are set on to remove his articles. If any boy is arrested in the act he never discloses his real name or residence or those of his associates. A Dalera will not ordinarily use violence while committing crime.

The Dalera Kahars of Barriely who have been convicted of any non-bailable offence or bound down under section 118 Cr. P. Code (Government Notification No. 127-VIII-158-14 dated the 21st January 1914), and those of Meerut and Moradabad (No. 132-VIII-158-14, dated the 21st January 1914) have been declared as a Criminal Tribe. Section 10 (b) has been applied to the male members of Barriely district.

(20) DHARIS.

A low class of Hindus found principally in the districts of Patna and Monghyr, also in districts Gaya, Sahabad, Bhagalpur, Purnea, and Darbhanga. They worship the Hindu deities as well as the sun, the moon and the earth as also some animal gods including the snake. They are believed to be a branch of Dusadhs, but they do not eat fowls as Dusadhs do. They have a particular regard for their house-breaking instruments (*Sindh-maris*) which they formally worship on some special occasions such as the Durga Puja and Dasahara. Their females do not touch this instrument.

The Dharis have generally good physique and are inveterate wanderers, often travelling long distances on plea of pilgrimage but really for the purpose of committing crime. Their ordinary costume is a *dhoti* and a *gâmcha*, but in their thieving expeditions they wear *kurta* and *pugree* with a view to pass off as men of higher class.

The Dharis usually work in gangs of about 7 men and **burglary** is their principal form of crime, the entry being effected by means of hole cut in the wall. In their thieving expeditions they carry *lathies* which they use in case of opposition. They usually operate in districts near their homes, but at times travel long distances, even visiting the eastern districts of Bengal, and celebrate with pigs and plenty of liquor their returns from successful tours.

The Dharis living in the districts of Patna, Monghyr and Bhagalpore have been declared under the Criminal Tribes Act by Notification No. 645 P., dated the 27th February 1915. Section 10 (b) has been applied to this tribe.

(21) DHEKAROS.

It is believed that the Dhekaros were originally the residents of Manbhoom district from where they emigrated into the Santal Perganas after the Santal insurrection. They are a low class Hindu Kamars and are supposed to be a branch of the "Dhokra" Kamars of Manbhoom. Dhekaros are found only in certain villages on the border of the Santal Perganas

and Birbhoom districts. By caste profession they are blacksmiths, but some of them earn their livelihood by cultivation or as snake-charmers. In appearance they look like low-class Hindus of Western Bengal. They are dark complexioned, with small sharp eyes, generally clean shaven and with both nostrils bored. They wear two strings of small wooden beads tight round their necks, and some of them adorn their front teeth with gold or silver. The women generally have four tattoo marks on the back of each palm and two on the upper and lower arms. They tattoo their faces too on the chin and between the eyebrows, the latter extending in some cases down the nose. They wear gilt ornaments in the nose (both sides and middle) and *churis* and bell-metal *bálás* on their arms. They speak Bengali.

The men are expert **thieves** and **burglars** and the women **pick-pockets** and pilferers. In house-breaking *they do not cut sindhs but prefer forcing locks and bolts or removing staples.* They do not generally carry heavy articles. It is not their usual practice to previously ascertain the house or houses to be attempted, but on their march they select any house that appears convenient. It is for this reason that they enter two or three houses in the same locality in one night, even vacant houses or those containing no property. One of their favourite methods is to enter kitchens and feast on whatever they can get hold of, carrying off the utensils and sometimes defecating in or near the house. They usually enter the house by the back door *(Khirki)* which is often left unfastened by the inmates, and, failing that, they scale the compound wall. Dhekaros never use violence while committing crime.

The females visit big *hâts* and fairs on plea of selling baskets and commit theft (including shop-lifting) in places where they find a large number of people assembled. They also steal ornaments from the persons of children and money tied up in the corners of *Sâris* worn by females. The stolen property is very cleverly passed on to a confederate. If a Dhekaro is arrested he would never admit his guilt or name his associates.

The stolen property is often concealed in the water of a tank or buried underground in a secluded spot from where it is removed later on and carried home in baskets. Anything other than cash is passed on to a local receiver.

Burdwan, Birbhoom and Hooghly are the chief fields of operation of the Dhekaros.

There is a class of blacksmiths in Bankura district called **Kamarias** who are believed to be akin to Dhekaros in many respects. They are also a criminal class, indulging in burglary and theft,—specially goat theft, but their criminality is not so marked or extensive as that of the Dhekaros.

The Dhekaros of Birbhoom district (all persons convicted of non-bailable offences or bound down under section 109 and 110 Cr P. Code) and those of Santhal Parganas district have been declared as Criminal Tribes under Government Notifications No. 12411 P, dated the 7th November 1914 and No. 2477 P, dated the 28th June 1915. Section 10 (b) has been applied to the tribe in both the districts.

(22) GAINS.

The Gains (literally "singer") are a class of vagrant watermen and are believed to be a branch of the Sandars. They are Mohamedans but they indulge freely in liquor and the women observe no *pardah*. There is a non-criminal section of this tribe who live a settled life on land, but the majority have no fixed place of abode and live in boats on the Meghna and its tributaries as well as in the districts of Tippera and Dacca. Like Sandars they move in their boats almost throughout the year and commit crime systematically. The men catch fish with rod and line for their own consumption, while the women, like those of the Sandars, hawk fancy things in Hats and Bazars and are of loose morals.

Gains commit river **dacoity and robbery**, chiefly on the Meghna and the Padma and their tributaries, their field of operation extending from Chandpur in Tipperah to Bhairab in Mymensingh and including the Dacca district. Their methods of committing dacoity and robbery are exactly similar to those of the Sandars,—approaching the victim boat with a request for fire, or cutting the rope of the boat when the occupants are asleep and attacking it when it is drifted to midstream. The Gains use in their criminal expeditions long boats called *Sarengas* in which they travel very fast as the Sandars do in their *Pansis*. The shape of the boats, both big and small, will ordinarily indicate if a gang of boatmen are Gains or Sandars.

All members of the tribe who have no settled abode and occupation on shore have been declared under the Criminal Tribes Act by Notification No. 910 P. dated the 22nd January 1915. Section 10 (b) has been applied to this tribe.

(23) GONDAS.

An aboriginal tribe residing in the districts of Sambalpore and Angul as well as in the Chhatrisgar Division and the Feudatory States of Bamra, Sonepur, Patna and Radhakole. They are divided into four classes, *viz.*, (1) "Oria" (living in Orissa), (2) "Laria" (living in Chhatrisgar), (3) "Kundulia" (living in Khond Mahals) and (4) "Kabaria" (following the faith of Kabir). The first three classes worship "Deladev" and follow some Hindu rites and customs, but they bury their dead bodies instead of cremating them like Hindoos. They are weavers and singers by profession, but are also given to the systematic commission of crime. The "Pans" of Angul and the "Kandras" of Cuttack and Balasore are believed to be branches of the Gonda tribe, but they appear to have given up their criminal habits.

The Gondas are expert **burglars** and usually effect entry by *cutting the thatch of the house.* They are also clever **pick-pockets**, visiting big melas and such other places where people congregate in large numbers. They have also been known to commit **road dacoities.**

Gondas are found also in the Midnapore district, and all such persons who have been, or may hereafter be, convicted of non-bailable offences or in cases under sections 109 and 110 Criminal Procedure Code have been declared under the Criminal Tribes Act (Bengal Government Notification No. 6270 P., dated the 20th April, 1916). Section 10 (b) has been applied to this gang.

(24) JADUA BRAHMINS.

They are a degenerate class of Brahmins found principally is Patna and Muzzaffarpur (P. S. Mohua and Hajipur). They do not observe any Brahminical rites and indulge in fish, meat and intoxicating drinks.

Jadua Brahmins are notorious **swindlers**, their favourite method being the doubling of wealth, or turning base metals into gold, by magic and incantations. They travel in parties of three or four, and when they spot out a likely victim, one of them goes to the village in the guise of a religious man, another accompanying him as his *chelâ*. The other confederates then come to the village and enquire, specially from the selected dupe, if a pious man had been seen there, saying that he had turned their silver into gold. The dupe's cupidity is thus roused and he is eventually led to invite the pious

man to visit his house and double his wealth. The usual processes of a doubling trick are then gone through and the valuables are either passed to the confederates while the mystic operations are in progress or buried in the mud floor from where they are extracted at night and sent away through the confederates. Before proceeding to the actual swindling the Jadua Brahmin practises various tricks to make the dupe believe in his supernatural powers, such as making himself invisible (the dupe is made to look at the sun and then at him), showing the goddess Lakshmi in a jungle at night, and so on.

(25) KALANDARS.

A class of Mohamedan "Fakirs" who live ostensibly by begging but always swindle people whenever they find any opportunity. They were originally the residents of the Lahore district and many of them are still found at village Sanda, P. S. Naulakha, district Lahore. The majority of this tribe wander about in gangs with their women and children, and visit almost every province in India.

A Kalandar would dress like a Mohamedan Fakir and usually loiter at a secluded place or by the side of a road. Whenever he comes across a likely victim he would represent to him that a mosque was being built at a certain place, and would beg money for the purpose. They carry with them a *Jhuli* (cloth bag) in which they keep a substance like milk in a small pot. By sleight of hand the substance is passed into the hand of the dupe which induces him to believe that the milk has been brought into existence by the Fakir's will. Some of the Kalandars earn their livelihood by showing magic and monkey-dancing, and those of Multan trade in cattle.

(26) KARWAL NUTS.

Karwal Nuts are a class of wandering gypsies having no fixed place of residence. It is believed that they had originally their settlements in Raibarieli and Gonda districts, but the Karwals of Bengal say that their ancestors came from Bhojpur in the district of Arrah. They are divided into the following sub-classes :—

(1) Haburah, (2) Sansia, (3) Sanchiria, (4) Brojobasis and (5) Gulgulias. Kanjars, Kajarhatis and Bhatus are also classes akin to them.

Karwals look like low class up-country Hindoos and they generally follow Hindoo customs, worshipping the goddess Kali, and other deities of their own whom they call Deo and Kushmina. A small section of the tribe follow Mahomedan customs and take Mahomedan names. Karwals eat almost every sort of meat, including pork, but not fish, and indulge in intoxicating drinks. The women wear long shirts (*Ghaghra*) in which they conceal stolen articles. They speak a *patois* of Hindustani.

Karwals wander about in gangs, living in tents of coarse cloth or bamboo mat, and keep ponies, donkeys and dogs. Each gang consists of about 25 persons, and, as women generally outnumber the men, it is believed that the men follow at a distance for the purpose of committing crime. Women take a prominent part in the command of the gang which is often known by the name of the woman at its head. Members frequently move from one gang to another and change their names.

Begging is the ostensible means of subsistance of Karwals, though they sometimes profess to trade in goats and donkeys. The women sometimes earn money by music and dancing, and occasionally by prostitution. But the main source of livelihood of the Karwals is the commission of offence against property in almost all its forms, specially **theft** of utensils and goats. They also commit **burglary** but *do not effect their entrance by means of Sindhs.* The women are as active criminals as the men, one of their favourite methods being to go to a house in a party of 10 or 12, some engaging the attention of the inmates by begging, dancing or singing, while the others enter the house and pilfer whatever they can get hold of, concealing the stolen articles under their *ghaghras.* Karwal Nuts are also a nuisance to the villagers, causing great damage by letting their cattle loose in fields having standing corps, and also stealing the crops to feed themselves and their cattle. When oposed by the villagers they will adopt a savage and indecent behaviour, using filthy language and resorting to violence.

The whole tribe of Karwals, by whatever name known, has been proclaimed under the C. T. Act by Bengal Government. Notification No. 3029 P. D, dated the 11th September, 1913. They are also bound, under Section 10 of the Act, to report themselves to the Police.

The Karwal Nuts of Bengal are being settled at Saidpore in the district of Rungpore under section 12 of the Criminal Tribes Act. The

Saidpur Nuts dress and look like Bengalis and many of them can speak Bengali well. Quite a large number of them have escaped from the settlement and are behieved to be responsible for the large number of highway robberies and dacoities committed recently in the Jalpaiguri Division, Dhubri and the State of Cooch Behar.

(27) KEPMARIS or INAKORAVARS.

A criminal tribe of the Madras Presidency, having their principal settlement at Edayapatti in the Trichinopolly district. The tribe is distributed into several gangs and form a fraternity rather than a caste. They are expert thieves, committing crime on the Railway, in towns and fairs,—in fact wherever they find a gathering of people. They dress like respectable people and are often educated, being aquainted with several languages (Telegu, Canarese, Tamil, Hindustani and English). Their criminality extends to Bombay, United Provinces, Behar and Orissa and Bengal. They are expert **Railway thieves** like the Bhamptas and steal bags, bundles and small boxes from carriages, platforms and waiting rooms, occasionally substituting bags and bundles filled with rags. Like Bhamptas they cut open bags and break boxes in carriages at night, but they usually prefer to work on platforms and waiting halls.

The Kepmaris (Thogamalai Koravars) of Trichinopolly, South Arcot, Chingleput, North Arcot and Cuddapah were proclaimed under the Criminal Tribes Act by Madras Government Notification No 443, dated the 18th June 1913. Those of Salem District have also been proclaimed.

(28) KURURIAS.

Kururias are low class Hindoos who had originally their residence in the Araria Sub-division of the Purnea district. Many of them emigrated into the Nepal Terai and began committing thefts and dacoities there to such an extent that the Nepal Government drove them out of their jurisdiction. They were thus forced to take shelter in the jungles on the Purneah-Nepal border and formed formidable gangs of dacoits, committing crime in Purneah, Dinajpore, Jalpaiguri and Darjeeling districts. The gangs were eventually broken up in consequence of the conviction of a large number of the members, and some of them joined hands with the dacoits of Morang. In 1911 the Nepal Government again drove all the Kururias out of their territory and they got scattered in various places, the men living in jungles and the women roaming about like wandering gangs. Some of them settled in the jurisdiction of Katihar Police Station.

Kururias leave their homes in October and move about in gangs consisting of both males and females. The ostensible profession of the males is to sell *Silajatu* and medicines, while that of the females is begging which gives them the opportunity to reconnoitre the houses selected for committing crime. Ordinarily they commit **petty thefts** and **burglaries**, but they use violence if they are opposed during the commission of the crime or if small parties of villagers or the police try to arrest them.

Kururias resemble to some extent the Mogheya Domes of Gorakhpore, both regarding their appearance and their manners and customs. They have a peculiar language of their own and often call themselves *Nalua* or *Bideshia Nalua*,—meaning bird-catchers,—*Nal* being the bamboo tubes to catch birds. They eat pork and drink liquor, but Maithili Brahmins perform their *pujas* and other religious ceremonies.

(29) LODHAS.

The Lodhas are considered by Sir H. Risely as a branch of the Bhumij tribe. They are found within the jurisdiction of Police-stations Naraingarh, Kharagpur, Danton and Sabong in the Midnapore district where they live in small huts on the outskirts of jungles. The males dress themselves only with a loin cloth and keep long hairs, and the females wear coarse *Saris* like the Bhumij or Bauri women of Bankura. The Lodhas are good labourers and emigrate in small numbers to districts adjoining Midnapore as well as to the tea gardens of Assam.

The Lodhas show the same criminal instinct as their ancestors the Bhumijes and adopt practically the same methods in committing **dacoities**. Their gangs are at times considerably big, so that they can very easily defy small police parties. In their dacoity expeditions they carry *lathies* and *tangies* (axes) while some go armed with swords. While a portion of the gang ransack the premises, the remaining men mount guard outside and, like the Bhumijes, fling stones at the villagers who assemble. They often make light by pulling down the straw of the thatch. More than one house are often attacked, even shops on the road side and boats in the canal, and the whole property, including articles of food, clothings and utensils, is carried off. They have numerous receivers in the neighbourhood of the villages they inhabit to whom they promptly sell the jewellery and

other valuables, the utensils and clothings being kept concealed till opportunity is found for their removal. Dacoity is their favourite form of crime, but they have now taken to **cattle-killing** as well.

All persons belonging to the Lodha tribe who have been, or may hereafter be, convicted of non-bailable offences or under Section 109 or 110 Criminal Procedure Code were declared under the Crminal Tribes Act by Government Notification No. 7022 P, dated the 20th may 1916. Section 10 (b) has been applied to this tribe.

(30) MAGHEYA DOMES.

The Domes are believed to be an aboriginal tribe of this country and are divided into two principal classes, *viz* (I) Magheya, and (2) Bansphor. There is a third subdivison called Darkars who are probably an off-shoot of the Bansphors. The last two classes have fixed places of residence, generally in the out-skirts of villages, and live by honest labour such as making bamboo baskets, while the Magheya still clings to his nomadic habits and considers commission of crime as a necessary duty in his life.

There are big Mogheya Dom settlements in the districts of Gorakhpur and Azamgarh in the United Provinces and Saran and Champaran in Behar. In Bengal they are found in almost all the districts and are in some places employed as Municipal sweepers and scavengers. They are indeed very useful hands in these works, but even when they hold regular employments they require careful supervision as it is in their blood to commit crime. A very strict eye should be kept on new arrivals, and both the Town and Village Police should, for this purpose, make daily enquiry in the Dom settlements. Whenever the arrival of a stranger is detected immediate steps should be taken to fix his indentity and verify his antecedents.

Magheya Domes are usually of very dark complexion and short stature, with moderately good features. They keep long unkempt hair and generally dress themselves in dirty rags. Most of them have bright eyes with a characteristic giltter. The women are often good looking and dress themselves better than the men, using ornaments when they can afford. They are generally of loose morals and prostitute themselves even outside their own caste. During the stay of a Mogheya in jail his wife would usually attach herself to another Mogheya for the maintenance of herself and her children, and return to the former husband on his release. Mogheya Domes have a kind

of slang of their own which is unintelligible to others. A Mogheya would often attempt to pass off as a Bansfor, but in a case like this it is always prudent to make enquiry about his relations by marriage and their relations as well. If the enquiry is carried on with a bit of patience it may eventually establish the connection of the man with a known Magheya. There will however be very little difficulty now, as quite a large number of them have been registered under the Criminal Tribes Act.

Mogheya Domes commit all sorts of offences against property, having special fancy for **burglary** and **highway robbery,** and learn the art of thieving from their very boyhood. In their burglaries they effect entrance by cutting a hole in the wall through which the arm is inserted and the bolt or latch opened. This is known as *Bagli Sindh.* A Mogheya Dome would invariably carry with him a box of matches and strike a light while inside the room. He is a daring burglar and is often reckless while removing ornaments from sleeping women and children. If he succeeds in burgling one house quietly, he would try another, and so on till five or six houses are entered. They also commit **sneak thefts** when they find the door of a house opon and carry away clothing, towels and whatever else they can lay their hands on.

Magheya Domes usually carry with them a bent *dâo* with which they cut holes in the wall. Sometimes they tie these *dâos* with their hands and use them gainst persons attempting to capture them. There was a case in Rajshahi Town in which one such man was hacked almost to death. When they are captured they sometimes inflict wounds on their own persons.

The women do not take part in the burglaries, but they assist the males in various ways such as removing the stolen property and carrying information of one gang to another. They are very clever and would often attempt to deceive Police officers during their enquiries. They practise a form of **swindling,** known as *bead swindling,* in which they offer brass beads to village women representing them to be of gold.

The following Magheya Domes have been declared under the Criminal Tribes Act :—

(1) In Bengal :—All persons (males and females) who are adult and who have been, or may hereafter be, convicted of non-bailable offences or under Sections 109 and 110 Criminal Procedure Code. (Government Notification No. 3378 P., dated the 1st March 1916). Section 10 (b) has been applied to this tribe.

(2) In Behar and Orissa :—All Magheya Domes within Saran, Champaran, Mazaffarpur and Darbhanga districts (Government Notification No. 3257 P., dated the 9th August 1913). Section 10 (a) and (b) has been applied.

(3) In the United Provinces :—All members of the tribe over the age of 15 years residing in the Ballia district (Notification No. 1092-VIII-308, dated 26th August 1913).

(31) MALLAHS.

The word Mallah denotes a boat-man, and Mallas are mostly boatmen or fishermen by profession. There are various kinds of Mallas or fishermen, both among Hindoos and Mohamedans, and their number in the United Provinces alone exceeds 2 lakhs and a half. All these people do not lead a life of crime, but a portion of those leaving in Muttra, Agra, Aligarh, Moinpuri and Bulandshair districts are believed to be criminals. Chain Mallas are a branch of this tribe.

The Mallas of Shergar, Surir, Math and Raya Police-stations of the Muttra district are **thieves** by profession. They are expert **pick-pockets** and do not ordinarily commit any other form of crime such as burglary. Bengal is their principal field of operation and they *commit crime while travelling by road or rail.* They dispose of the stolen property as soon as possible and if it excites any suspicion they say that they have been compelled to sell their articles owing to their funds having run short. They commit theft in Railway Stations and platforms specially near the booking offices in big Stations. They usually call themselves Thakurs or Benias and pose as *Sadhus* in waiting halls of railway stations where one of them offers free smoke of *ganja* or tobacoo to passengers and engages them in interesting talks, while his confederates try their pockets or remove their bundles. Calcutta is their favourite haunt, where they come in batches in winter and hire small houses, often changing them to avoid suspicion. When arrested, they conceal their real name and residence. While travelling by rail they never purchase through tickets, but break their journey at intermediate Stations. When returning home they usually get down at Hutras Junction and sometimes at Rayah, but never at Muttra. The Mallas of Muttra do not admit any connection with the Chain Mallas of Gorakhpur, but the modus operandi of both the classes is almost the same, except that the criminality of the former is mostly limited to Calcutta and its neighbourhood, while that of the latter extends to other districts of Bengal. Besides this, Mallas often admit other castes,

such as Daleras and Aherias, into their fraternity but Chain Mallas do not.

The Mallas also come down the Ganges to Bengal in their boats, the crew of which often consist of such other criminal classes as Pasis, Chamars, Bhurs, and Pulwar Dusadhs. Many of these boats come down with the sole object of committing crime on rivers and river banks though they ostensibly follow some honest trade. They travel up and down the Ganges, Brahmaputra and Meghna, as well as other big rivers of Eastern Bengal, and proceed even as far as Chittagong and the Sunderbunds to the east, and the forests of Cooch Behar and Alipur Doars to the north. They do not confine themselves to committing crime on the water and at places lying within easy distance of the river banks, but occasionally travel long distances if they find any opportunity of committing big burglaries.

The Mallas (or Chain Mallas) of the following districts have been declared under the Criminal Tribes Act :—

Bulandshair—All male members over 15 years. Muttra— do	Government Notification no. 263-VIII, 150-3 dated 5th February 1914.

Agra—Residents of certain villages named in the Notification (Notification No. 742-VIII, 158-3, dated the 17tn April 1914).

Aligarh—Certain male members named in the Notification (Notification No. 1992-VIII-158-3, dated 29th October 1914).

Ballia—All male memhers over the age of 15 years,—(Notification No. 267 VIII-158-3, dated the 5th February 1914).

Gorakhpur—(Village Sukhroili)—All male members over the age of 1 years,—(Notification No. 265-VIII-158-3 dated 5th February 1914).

Mirzapur.—Certain male members,—(No. 261-VIII, 158-3, dated the 5th February 1914, and 172-VIII-158, 3, dated the 25th January 1916,-

(32) MARWARI BAURIYAS.

Marwari Bauriyas, also known as Bagris or Bagaries, are residents of Baroda or Jodhpur and are low caste Hindus though they frequently pass themselves off as Brahmins under the guise of "Gir" or "Gossain". They are dark-complexioned, of medium build, and dress themselves in dirty *dhoties*, short coats or shirts and *pagrees* tied in the Marwari fashion. A Bauriya is branded with a hot iron on three places, generally near the navel, soon after birth. This leaves large scars by which a Bauriya can be easily identified. The women have, in addition, five tattoo marks on the face, one on the outer corner

of each eye, one on the inner corner of the left eye, one on the left cheek and one on the chin. While on a criminal expedition Bauriyas assume false names, four or five of the gang often assuming the sams name to confuse identification, and conceal that they are Bauriyas.

C.W.C. Plowden Esq., C.I.E. gives the following account of the process of **manufacturing and altering false coins** by Bauriyas :—

"A member of the gang, disguised as a Gossain and posing as a Brahman, makes a small purchase and tenders a Faruckkabad rupee in payment. On this being refused, he explains that he is a stranger, and enquires what coins are current in this part of the country. On being shown a rupee, he examines it and, by sleight of hand, passes back to the shop-keeper a counterfeit coin which he has kept concealed in the palm of his hand. In order to divert suspicion, he carries a small stick in the hand in which the counterfeit coin is concealed. In manufacturing the coin, ordinary clay mould hardened in fire is not used ; all that is required are two tin rings, slightly larger in circumference than an ordinary rupee. Some fine earth is obtained, mixed with lamp oil or ghee, moulded and pressed into the rings and an impression taken of each side of a rupee. The two are then placed together, a small portion of the earth is removed from the top of the mould, and the melted ingredients, consisting of solder, copper, tin and bell-metal, are poured into the mould ; after turning the coin out of the mould, the edge is trimmed with a knife, and the edge of a new genuine rupee is pressed round the soft edge of the spurious rupee to produce the milling. This is done by experts of whom there is always one with each gang. The earth for the moulds is usually prepared by the women and children. Each mould is used for the manufacture of only a single rupee."

On the arrest of a person suspected to be Marwari Bauria his finger-impression is to be sent to the Simla Bureau and information should immediately be given to the Superintendent of Police who will communicate direct with the Assistant to the Agent to the Governor-General, Rajputana, Criminal Branch, Mount Abu. The arrest should also be reported to the Criminal Investigation Department by telegram. When a gang of Bauriyas is placed under watch, a very strict eye should be kept on each member as they often get away on plea of begging

and do not return to the camp even if they have left behind their belongings. When the camp of a gang is searched it should be remembered that they usually keep counterfeit coins buried near their halting place.

Marwari Bauriyas (all members above the age of 14 years), wandering or residing in the districts of Ahmednagar, East or West Khandesh, Nasik, Poona, Satara and Sholapur, have been declared under the Criminal Tribes Act by Bombay Government Notification No. 3413, dated the 3rd May 1912.

(33) MUZZAFFARPUR SONARS.

Though belonging to the same stock as the *Sonars* (goldsmiths) of Behar and the United Provinces the Muzzaffarpur Sonars are now considered as a separate caste on account of their criminal practices and there is no intermarriage between them and other Sonars. The number of these swindling Sonars will be about three or four hundred. They were formerly the residents of the Sadar Police-station in the Muzaffarpur district. When their criminal exploits became sufficiently known to the police they moved to P. S. Majorganj on the Nepal frontier and subsequently crossed the border and settled in villages Bhagwanpur, Lachimpur, Balra, Arnaha, Mirzapur, Madhubani, Rohua, Sisant, Harpurwa and Gorahia. The Sonars are very keenly supported by their zemindars who receive from them the proceeds of their crime and regularly protect their families during their criminal expeditions which extend throughout almost the whole year, commencing from July and ending at the time of the *Holi* in March.

The chief form of **swindling** practised by a Muzzaffarpur Sonar is the *Bala trick*. They travel in small parties and loiter about such convenient places as the waiting hall of a railway station or such other place where travellers congregate. They usually select as their victim one who is returning home with money from his place of business or labour. One of the gang makes acquaintance with the man and enquires about his destination etc., saying that he too would travel that way. In the course of the journey (either by road or rail) another man meets them and asks for pecuniary assistance saying he has lost his money and has nothing with him but a gold or silver *bala*. The first swindler talks with him about the price of the *bala*, the purity of the metal and such other things, and eventually induces the dupe to purchase it or

advance money to him, keeping the *bala* as security, in order to enable him to purchase it. The offenders then escape at the first opportunity and the dupe then finds on examination that the *bala* given to him is not the same as was shown him at first but another of a baser metal. In some instances the swindlers use violence if the victim shows unwillingness to part with the money. *Bala* trick is also practised by other classes of criminals, such as Nunias of Champaran, Dusadhs, Mundas and Kurmis. *Tapka trick* (See "forms of swindling") is also practised by these Sonars, but not so frequently as is done by the swindlers hailing from the Punjab and the United Provinces, specially Ghazipur.

Muzaffarpur Sonars dress themselves like ordinary low class upcountry Hindoos and carry with them a small bundle tied at the back, as well as umbrella, *lota* and a small *batua* (cloth bag) which contains betel-nut, lime and *khaini*. When arrested, they generally conceal their real name and residence and give themselves out as Goalas, Kairis or Benias. In order to indicate his whereabouts to his confederates a Muzaffarpur Sonar will usually dig under the tree where he cooks his food a triangular hole and a line in the direction in which he goes.

(34) MECCA MOWALLEMS.

A class of **swindlers** hailing mostly from the Dacca district (villages Baraikhali, Sridhatkhola, Pousha and a few more adjacent villages in Police-station Nawabganj) and touring about in the Eastern districts of Bengal exhorting simple Mohamedans to uedertake the journey to Mecca or pay the expenses of some other man, preferably one of themselves, who would go to Mecca and perform acts of piety on their behalf. They dress themselves like Hajis and carry with them water said to be of Zam-Zam (a sacred well in Mecca), *tabiz*, and similar other articles alleged to possess the power of curing diseases or bringing good luck. Long lists of persons from whom they have collected money are also found on them.

They travel in parties of two to six. If any one agrees to accompany them to Mecca they instruct him to bring a large sum of money, not less than 300 rupees, and when the money is brought, advise him to hand it over to them for safe custody. If this is done they decamp with the money as soon as possible ; but if the victim hesitates to part with the money,

they use violence, either instantly or in the course of a boat journey along with him. There are instances in which such victims were gagged and thrown overboard or killed in the first night of the journey.

(35) MINAS.

A criminal class residing in the Jodhpur, Joypur, Bikaneer, Bharatpur and Alwar States as well as in the district of Gurgaon in the Punjab.

Minas have good features and look like Rajputs. The males wear small ear-rings and no other ornaments, and usually dress themselves neatly. They speak Marwari or Rajput dialect, but many of them can speak Hindi and Urdu fluently. Some have fair knowledge in their own vernacular. They have some slangs of their own such as "rumal" (house-breaking instrument), "kajli chai" (dark night), etc. In their criminal expeditions they move in gangs, but they do not take with them their women, children or any domestic animals. They generally move in the guise of Brahmins, shaving themselves clean and wearing *tilaks* (either triangular or in the shape of a trident, on their fore-heads, but a close observation of their habits, such as eating mutton (no other sort of meat), or three or four of them taking food from the same plate, would indicate that they are not Brahmins. They carry with them dried tongue of a goat, either cut into small pieces or made into pills, which they keep inside the small bags containing tobacoo or condiments.

Modus operandii.—Minas are expert burglars and usually effcet entrance into houses by cutting *bagli sindh*, or by cutting a portion of the thatch and dropping down one of the gang by means of a rope. Sometimes they cut big *square* holes in the wall when iron safes or large boxes have to be taken out. Ordinarily they do not remove anything but cash, ornaments or costly clothings. At the time of committing burglary a Mina would cover his body with a piece of ash-coloured cloth, leaving the arms free, and conceal under it a knife or an axe as well as pieces of bricks. Sometimes they travel long distances collecting information about houses suitable for the commission of burglary, and carry on their operations in the dark fortnight commencing from the last house reconnoitred and ending with the first. Before entering a village on a criminal expedition they usually leave their clothes and utensils tied up in a bundle and suspended from the branch of a tree at a distance of a mile or two from the village.

The Minas of Gurgaon district in the Punjab have been restricted under section 12 of the Criminal Tribes Act by Notification no : 8307 dated the 4th April 1917. The Minas of East Khandesh in the Bombay Presidency have been decleard under section 3 of the Criminal Tribes Act, and section 10 of the Act has also been applied to them by Government Notification No : 2297, dated the 23rd March 1914.

(36) MINKAS.

Minkas are a vagrant Mohamedan sect and are also known as "Madaris" as they worship "Jinda Madar". They were originally the residents of Bilaspur and Raipur districts in the Central Provinces from where they emigrated into the Gangpur Feudatory State in Behar and Orissa about 50 years ago. There are about 200 adult Minkas (both male and female) in the Gangpur State. They live in the State only during the rains, and throughout the remainder of the year they move about in gangs, committing crime wherever they go. The males follow ostensibly the profession of jugglers and beggars, while the females are expert thieves. The males are wild looking men with dark complexion and long hair, strong built and usually robust. They sometimes wear *Lungi* and coat and carry with them the juggler's paraphernalia. The males have usually their ears bored and some wear strings of bead. When questioned, they say that they are Mohamedans of Burdwan district. The women are of average height and build and are very clever and active. They tattoo their hand and faces and wear glass bangles (*churi*), silver ornaments and strings of bead round their necks. They wear their clothes like Bengalee women (often like those of Dacca district) and pose as natives of Bengal assuming Hindu names. Minkas speak a sort of Mahratti among themselves, but they can converse in Hindi, Uriya and Bengalee.

Minkas travel in parties of about 10 or 12 persons, using the railway whenever possible, and never going very far away from it. *The females commit the actual theft*, while the males arrange to dispose of the stolen property. The favourite forms of crime with the Minkas are **shop-lifting, pocket-picking and stealing articles left at bathing ghats** by bathers. They visit also important railway stations as well as bazars, *hats* and fairs. The stolen property is very quickly and dexterously passed on through a series of confederates until it reaches the men. Ornaments are melted down as soon as possible or sold, but stolen clothes are sewn up in the beddings. They also exchange stolen articles for drink. When arrested they give false

names saying they have no fixed place of residence. As they work in small batches of 3 or 4 persons, having a central meeting place, immediate search should be made for the rest of the gang on the arrest of one member or a sub-gang, and the same may be traced within four or five miles of the place of arrest. The finger prints of Minkas should be sent to the Bankipur Bureau where their photographs are also on record.

Minkas do not usually commit any crime in the Gangpur State, but their operations extend over the most part of Bengal, Assam and Behar and Orissa.

Minkas have been declared by the Gangpur State as a Criminal Tribe under the Criminal Tribes Act.

(37) MUCHIS. (CHOTA BHAGIYA).

Muchis are divided into two classes, Chhoto Bhagiya and Bara Bhagiya. Though all Muchis profess to be Hindus and observe several rites and customs in common, there are some very broad distinctions between the two divisions. The Chhoto Bhagiyas take beef, pork and fowl which the Bara Bhagiyas do not touch, and the former have their religious rites performed by their own castemen while the latter get the services of a special class of Brahmin priests. Among all Muchis widows and divorced wives are permitted to re-marry in *nika* form, but the *nika* wife of a Bara Bhagiya would not wear the *sankha* (conch bangle) or put vermillion on her head as that of a Chhoto Bhagiya would do. The two divisions do not intermarry, and a Bara Bhagiya considers himself as socially superior to a Chhoto Bhagiya, his usual profession being cultivation and basket-making and general leather work. They are also professional drummers.

Chhoto Bhagiya Muchis are found mainly in the districts of Jessore, Nadia, Murshidabad, Khulna, Pabna, Rajshahi, 24-Parganas and in small numbers in Hooghly and Burdwan. They are notorious criminals and commit **dacoity** and **robbery** in all forms as well as **burglary** and **theft**. In committing burglary they usually effect their entrance by cutting the ropes of *jhamps* and *use ploughshares* in forcing open doors and boxes. While committing dacoity and robbery they carry lathies, swords and sacrificial knives, and some of them (living in the Basirhat Sub-Division of the 24-Parganas) carry short bamboo clubs which they conveniently conceal under a *chadar* thrown round the body. Their dacoities are

invariably attended with unusual violence. They beat mercilessly the inmates of the houses they attack, after binding them hand and foot, or tying persons together, and often apply burning torches to their face and body. In committing crime the Chhoto Bhagiyas associate with Musalmans, Podes and other castes.

The Chhoto Bhagiyas are also notorious **cattle-poisoners** and generally use *arsenic* wrapped in plantain leaves.

(38) PALWAR DUSADHS.

Palwar Dusadhs of Ballia are, as a class, quite distinct from the other Dushadhs of the Behar districts, though there are certain similarities in their habits. They claim to be Hindoos, worshipping Hindoo deities, and Rahu among them in particular, but they keep and tend pigs which they eat, as also fowls and field rats, and take cooked food from any Hindoo except such unclean castes as Dhobis, Doms and Chamars. They have also widow-remarriage prevalent among them.

The Palwar Dushadhs of Ballia are expert criminals, working both singly and in gangs, and they commit **theft** in every form, including pocket-picking and ornament-snatching, as well as **burglary** and **dacoity** Many of them work as ordinary coolies in the coal fields and on the Railways of Bengal and are often responsible for the burglaries and dacoities committed near the colliery or the line of rail. Sometimes a gang takes a temporary lodging in a crowded locality and commit a number of burglaries, disappearing as soon as they are suspected. They often conceal their real name and residence and send money orders in assumed names to their people at home. A number of Palwar Dusadhs have settled in Saran and other districts of Behar, while some of them have established colonies in the Malda and Murshidabad districts of Bengal. The field of operation of the Palwars extends to almost every district of Bengal as well as to Assam and Cooch Behar.

The Palwar Dusadhs of Ballia were declared as a Criminal Tribe in Government Notification No. 1270-VIII-158-8, dated the 1st October 1913. Section 10 (b) has been applied to those who have been convicted of a non-bailable offence or bound down for good behaviour. The Government of Behar and Orissa have also declared as a Criminal Tribe the Palwar Dusadhs of Saran as well as those found elsewhere in Behar and Orissa. (Notification No. 94 P. dated the 10th January 1916).

(39) PASIS.

The Pasis are low class Hindoos found chiefly in Oudh and Mirzapur as well as in Allahabad, Rai Barriely and Jaunpur districts. They derive their name from the word *Pâsa* which implies the cord used for climbing palm tress, and their original occupation was the extraction of *târi*. Many of them still follow this profession, while others prepare and sell grindstones. They eat meat including pigs and drink strong liquors.

The Pasis come in large numbers to Bengal and work in the Mills near Calcutta, in the coal fields of the Burdwan district and at all labour centres of the Eastern and North Bengal districts. They are expert **thieves** and **burglars**, and the Mirzapore Pasis are specially addicted to **river thefts**. In fact almost every boat owned by Mirzapore Mallahs has at least a couple of Pasis among the crew when the boat remains unemployed.

Pasis are experts at cutting *Sindhs* and resort to violence whenever resisted. Their record of criminality in Bengal includes **dacoity** and **robbery**. They dispose of the stolen property to local receivers where they commit crime. Sometimes they send money home and present handsome amounts to the zeminders and even to the Police of their native place to keep them at their back. Pasis have a strong fraternity among themselves, and one of them would not act as an informer against other Pasis. They do not settle in Bengal permanently, as do the Bhurs and Dusadhs, but return home every year to enjoy the proceeds of their crime.

The Pasis (all male persons convicted of non-bailable offence or bound down for good behaviour) of the districts of Allahabad, Azamgarh, Barabanki, Fyzabad, Jaunpur, Mirzapur, Pratapgarh, Rai-Barriely and Unao have been declared under the Criminal Tribes Act by Government Notification No. 2792-VIII-158 5, dated the 16th December, 1916.

(40) RAUTHS.

A class of up-country Kurmis who were originally the residents of Belwatia, Simra and Ranichhapra of the Champaran district whence they emigrated about 40 years ago to village Kanaidanga in the Kotwali P.S. of Dinajpur. They live in their houses from April to June and wander about throughout the remainder of the year with their women and children, visiting principally the districts of Rungpur, Bogra, Pabna, Rajshahi, Mymensing, Dacca and the State of Cooch Behar.

Their ostensible profession is to sell medicines, *salam misri*, *Himsagar taila*, oil made from Dhanesh bird, and such other articles. The women often go about begging. Though these gangs have not yet been convicted of dacoity, they were very strongly suspected in some recent cases, specially of the Rajshahi district, and dacoities often occur in the localities they visit. They are treated by the Police as third class wandering tribe, but it is necessary to keep particular watch on these gangs wherever they are found.

(41) SANAURHYAS.

Sanaurhyas, generally called Sanaurhya Brahmans, are a class of itinerant thieves residing in Jhansi in the United Provinces, Orcha and Datia in Bundelkhund, and Bilaspur in the Central Provinces. Their methods of crime and habits are similar to those of Barwars like whom they commit **theft in running trains and at Railway Stations, fairs and bathing places.**

They work in parties of from 2 to 15 or 20 men under a leader called *Mukhia* or *Mukhtiar* who generally does not take part in the actual thieving which is usually carried on by *Upardars*, each of whom is assisted by one or two boys called *Chawa*. Sanaurhyas go out in their thieving expeditions in the beginning of the cold weather and return home when the rains set in. They never take their women along with them in these expeditions.

One of their methods is to induce a person to bathe whom they intend to rob. The *Chawa* will accidentally touch him or run against him and will plead that he is an ignorant sweeper, and the victim will thus be obliged to bathe. When an *Upardar* finds a woman guarding the property of a man who is bathing he will go and sit down to ease himself in such a position as will compel the woman to turn her face away from the property,and the *Chawa* will then remove what he can conveniently lay his hands on. In running train thefts Sanaurhyas sometimes conceal the stolen property underneath the seat by sticking it with beeswax or some other adhesive.

The Sanaurhyas visit Bengal, but not so extensively as do the Barwars or Bhamptas.

The Sanaurhyas of Jhansi (all male members over the age of 15 years) have been declared as a Criminal Tribe by Government Notification No. 1689-VIII-158-11, dated the 29th December 1913.

(42) SANDARS

Sandar are a nomadic tribe, living principally in boats with their families, and are found mainly in the districts of Bogra, Rajshahi, Pabna, Mymensingh and Dacca of Bengal. They are low class Mohamedans, but there is no intermarriage between them and the other Mohamedans of the districts where they are found. In general appearance and dress they do not differ much from the other low class Mohamedans of Bengal, and they speak Bengali with an accent of their own. From April to November they live on the water, and very few of them have any fixed abode. While on the water, they travel in *bohors* (flotillas) consisting of 30 to 40 boats, and their boats have a peculiar structure with the covering in the shape of a torpedo. In winter the majority of them live on shore, building themselves small structures roofed with the coverings taken from their boats.

Sandars carry on the trade of hawking cheap fancy articles and this is done mostly by the women who go about with the articles and mark the houses suitable for theft or burglary. The women are of loose morals, and by submitting to the advances of the people they manage to get an insight into the places containing their valuables.

Sandars commit all sorts of river crime including **dacoities**. They prefer quiet **thefts** from boats and houses by cutting *jhamps*, and in most cases they steal cash. The women are also expert criminals and commit petty pilfering and snatching at *melas* as well as **burglaries** at river-side places.

Sandars commit daring river dacoities and in doing so they do not mix with bad characters of any other class or sect. The peculiar feature of a Sandar dacoity is that the moorings of the victim boat are cut and it is attacked while in midstream. There are usually 12 or 14 men in each gang who travel in small swift *pansis*. Another peculiar feature is hammering on the roof of the boat attaked and using great violence in case of resistance. As a rule Sandars do not remove anything but cash. The above features are not however a certain criterion for concluding that a particular dacoity is committed by Sandars, as almost all river criminals in Bengal follow practically the same method. The Sandar *bohor* usually anchors near the junction of two or three streams, and the party going on a dacoity expedition proceed several miles upstream and row

hastily down, committing a series of dacoities in one night till they return to their *bohor*. Some Sandar gangs are known to have committed dacoities on land also.

When the Sandars steal ornaments they dispose of them through Rasooas, a low class Mohamedan blacksmiths found in Bogra, Pabna and Mymensingh districts.

In Government Notification No. 6763 P, dated the 14th June 1915, the gangs of Danesh Sandar of Bogra, Jhalu Sandar of Pabna and Suklal Sandar of Faridpore were declared as a Criminal Tribe. As Sandars visit Assam as well, these three gangs have been declared under the Criminal Tribes Act by the Assam Government also. Section 10 (b) has been applied to them.

(43) THAROOS, ROWASHIAS, BROJOBASIAS, NUTS.

These are nomadic tribes and are akin to each other in many respects, so that one can easily pass off as any of the four. They may be all classed as Nuts, the term "Nut" literally meaning a dancer and signifying more a profession than caste. The Tharoos come from the Morang side of Nepal and some of them have settled on the Nepal border of Purnea and Darbhanga. Nuts have generally intelligent face, sparkling eyes and thick eyebrows, and they talk fluently. Those who belong to Nepal proper are fairer than the Tharoos who live on the Nepal border in the British territory. The Tharoo women dress like ordinary up-country women and wear a circular ornament about the size of a rupee on the right nostril. There is a belief among the Tharoos of Nepal that their women are forbidden to cross a particular river in Nepal, and if they do so they are excommunicated. But it does not appear that this prohibition is specially observed by the criminal members of the tribe.

Nuts have all along been known as petty pilferers (vide description of Karwal Nuts) but these tribes have recently begun committing **dacoities** and **robberies**, their favourite form of crime being to rob people on roads, specially Mahajans returning from *hats* in the evening. Some members of the gang visit the *hat* and spot out the man who is likely to carry enough cash from the *hat*, such as a pice-seller, jute-paiker and so on, and follow the victim from the *hat* till he comes to a place convenient for the commission of the crime. They are very daring criminals and commit crime in batches of 3 or 4 men even on portions of the road adjacent to *bustees*, and when people are passing along the road. Their favourite haunts are the

districts of Jalpaiguri, Goalpara, Rungpore, Dinajpore and the State of Cooch Behar. Karwal Nuts often attempt to pass off as Tharoos to avoid registration under the Criminal Tribes Act.

(44) TUTIA MUSSALMANS.

Tutia Mussalmans are found chiefly in the districts of Midnapore and Bankura as well as in Hooghly and Burdwan in small numbers. Their original tribal occupation was the cultivation of *Tunt* (mulberry) for rearing silkworms, but now-a-days most of the tribe live by cultivation or other forms of day labour, while some depend entirely on crime for their existence. The Tuntias of Police-stations Ramjibanpur and Garbetta in the district of Midnapore and Police-stations Siromanipore, Onda (specially village Punisole), Taldangra and Indpur of Bankura are notoriously criminal, and **dacoity** is their favourite form of crime. The criminals emigrate to different places in gangs and have regular haunts in Calcutta and Belliaghata. Their field of operation extends to the 24 Parganas, Nadia, Jessore, Hooghly and Burdwan, besides Midnapur and Bankura. In some instances they have been known to associate with other criminal classes, both Hindus and Mahomedans (vide Panchu Sekh's gang case).

The criminal fraternity of the Tuntias is rather striking. The members of one gang often live at long distances from one another and would travel longer distances, either by road or rail, to meet at appointed places for planning dacoity expeditions. In the course of one of such expeditions they will commit a number of dacoities, always keeping themselves concealed in some neighbouring jungle or such other place for the purpose of taking their food or dividing the booty after the commission of a dacoity. Whenever, therefore, a dacoity appears to be the work of Tuntias, the jungles within easy distance from the place of occurrence should be carefully searched.

A gang of Tuntias will assemble at a place for drink in the early part of a night fixed for a dacoity. One of the men generally scales the outer wall and lets in the remaining men by opening the main door. The door of the inner room is often broken open with a *dhenki* (husking instrument) which is suspended from a cross-beam and swung against the door. The use of *dhenki* is not however a sure indication that a dacoity is the work of Tuntias as the same method is employed by other criminal classes as well. The Tuntias tie up the inmates of the

house to prevent their escape, but they do not use unnecessary violence. The spoil is divided in a secluded place immediately after the occurrence.

Seven Tuntia gangs living in the districts of Bankura, Midnapore, Hooghly and Burdwan have been declared under the Criminal Tribes Act by Government notification no. 5319 P., dated the 29 June 1914. Section 10 (b) has been applied to these gangs.

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